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THE DOGMAS OF THE CONSTITUTION.

FOUR LECTURES,

BEING THE

FIRST, TENTH, ELEVENTH, & THIRTEENTH,

OF A COURSE ON THE

THEORY & PRACTICE OF THE CONSTITUTION,

DELIVERED AT

King's College, London,

IN THE COMMENCEMENT TERM OF THAT INSTITUTION.

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"Les savans doivent aujourd'hui élever la politique au rang des sciences d'observation."—AUG. COMTE, *Système de Politique Positive.*

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" It should at first seem that the question What is the political constitution of a country? is of all questions the most easy of solution;—a constitution of principles, forms, and laws being the most prominent feature in its policy; to be seen and felt, we should suppose, in every day's experience; as we perceive our own powers in the movements and regimen of our natural bodies. Yet in governments, circumstances often arise, [and are perpetuated,] by which the question is perplexed; and what ought to be visible and clear is thrown in the back-ground, or kept wholly out of sight."—*Dyer's Letters on the English Constitution*, p. 3.

PREFACE.

The following Lectures, selected from a course recently delivered at King's College, are made public at the urgent desire of several of those who heard them. The author was, indeed, pressed to publish the whole course,—but he did not see any sufficient object to induce him to comply with that request, however flattering he might feel its expression. It may be asked, in what respect, then, do the Lectures now selected entitle themselves to this privilege. Certainly, the author is not sanguine or self-confident enough to suppose that any thing he can have to say can produce any sensible impression upon a delusion so almost universal as that which is spread over the public mind with

regard to the real structure of our Constitution:—a delusion, the necessary, he had almost said, the *deserved* consequence of the unspeakable folly committed by all parties, for a whole century or more, in representing a Constitution as still subsisting, which had been *tried, and found impracticable and mischievous,*—the source of alternate despotism and civil war,—and the parent of unceasing jealousy and collision;—and in actually making laws and standing orders to support that abandoned and non-existent Constitution, *as if it were a reality.*

If, as it seems now to be admitted, the word has gone forth that this country is to return to the Constitution it had before the Revolution,—a Constitution of independent estates—who are to struggle for power as chances shall bring them uppermost, and to play the game of "which is the justice, which is the thief," according as the tide of events shall enable the one—or the other—party in the state to proclaim its "*fiat justitia, ruat cœlum;*"—the writer is not so vain or so ignorant as to suppose that the addition of one little pamphlet to those that have preceded, can create a single *eddy* of public opinion against the tide.

But, in a period of overwhelming delusion, there is still one motive for publication always left. No delusion, however universal, ever did—ever will—last for ever. Even the phrenzy of the American war had its re-action in public opinion, as what is called Parliamentary Reform will one day have also. When that day arrives, the writer confesses he would prefer to rank among those who saw through the delusion, rather than among those who joined the cry. With this motive, only, has he consented to the publication of those of the Lectures he recently delivered, which will shew that, however guardedly he might speak upon the subject in a public institution, where he sustained an official character, see through the delusion he certainly did, and scrupled not to avow it.

Of the many extraordinary phenomena which the writer has yet lived to witness, the climax is, that the combined mental forces of the Houses of Lords and Commons should have been engaged, month after month, in the most arduous and eventful agitation of the principles of the Constitution which has ever yet been witnessed, without the most important, if not

the only true view of the subject, having been *manfully* and *boldly* brought before the public as the result of that debate; and with a tolerated persistance in a lying delusion which has become at length (measuring it by its results) not a *folly* merely, but a CRIME; since it is, perhaps, putting in risk the very existence of the country.

The whole of the arguments in favour of Parliamentary Reform have assumed, as might naturally be expected, that the traditional theory of the Constitution is *right;* and while this is assumed, or admitted, those arguments stand on a vantage ground, from which they can *never* be dislodged. The opposers of Parliamentary Reform may criticise the details,—they may prophesy danger from the results,—they may designate it as revolution, not reform; but the firm reply will still be,—and *ought* to be, if the premises be true,—"All we ask is the Constitution; and if you call *that* revolution, why then give us the Constitution by that name, if it so please you that we shall have it by no other."

This is the ground triumphantly and forcibly taken by the advocates of the Reform Bill.

"There is no speech," says the leading article of the *Morning Herald,* of April 2, 1831, "which has been delivered upon the reform "question, either in or out of Parliament, which "goes so decidedly to the point, or which con- "tains in so small a compass what may be called "the pith and marrow of the subject, as that "which was addressed, by Mr. Campbell (the "son-in-law of Sir James Scarlett), to the popu- "lace of Monmouth. In proof of which we "extract from it the following pertinent re- "marks :—

"He denied that the measure was revolutionary, "and contended that it was a restoration of the old "Constitution of England. That Constitution consisted "of King, Lords, and Commons, and the Commons "were supposed to be the representatives of the people. "But the people had long been deprived of their rights, "and the House of Commons was filled with the nomi- "nees of peers, and persons who gained admission to it "by the grossest corruption. The consequence was, "that the house had entirely lost the public confidence; "and even if its members so returned were enlightened "and upright, it could not advantageously legislate for "the country. By the great measure of Reform which "had been brought forward, the Throne would be re- "lieved from a pressure which had often embarrassed, "and would ultimately have endangered it; the Peers "would be deprived of an unconstitutional power "which was ever liable to abuse; and the people would

"recover what was their birthright—the choice of the "representatives who were to make the laws which "they were bound to obey. He was not afraid of any "collision between the different orders of the state; "on the contrary, he thought it would have a very "wholesome influence upon the Nobility, if, instead of "engaging a mercenary force to defend them in the "House of Commons, they were thrown upon their own "resources, and were obliged to trust for their preser- "vation to the exercise of their constitutional privileges, "and the exertion of their own energy. Occasional "differences had taken place between the two Houses in "the best of times, and had been attended with very "salutary consequences. The King's patriotic support "of the bill shewed that he was not afraid of his pre- "rogative being impaired by it; and it was hailed by the "unanimous and enthusiastic applause of the people."

There are but two ways of dealing with this matter. The traditional theory of the Constitution is either *right* or *wrong*. If it be right, the Constitution is practically obliterated by corrupt usage; and ought to be restored. If it be wrong, the practical corruption may be either the only mode, or one of several modes, of escaping from the theoretical fallacy; and the only question would be, is it the best mode?—Again, if this theory *be wrong*, whatever amendments may be required in the actual practice of the Constitution, a false

theory cannot be the proper basis on which to construct those amendments, and the error *may* be fatal.

If the *theory* of the Constitution turn out, upon close examination, to be fraught with the most invincible absurdities, and if, notwithstanding, those absurdities have not been practically felt, the question must be by what means they have been escaped from; and the answer can only be this, — by a constant practical violation of the theory itself, although without an open or avowed renunciation of it, and with the cautious preservation of most of its *forms*.

The whole argument of the conservative party in the House of Commons, talented as it has been in some respects, has involved one grand and fatal error in logic; — that of proceeding upon premises which were not produced, and which the public mind was not in previous possession of. The consequence of this has been to reduce it, in the eyes of the larger portion of the public, to *mere assertion*, for which no foundation was laid. They have throughout acted as if that were self-evident to all the world which is evident to themselves only from their practical familiarity with the

real machinery of government, forgetting that it has actually been *prohibited* from becoming self-evident to the world, by a common conspiracy to sanctify and keep on foot an utter delusion, by all the machinery of language,—of forms,—of passive recognition,—and even of positive laws! The indistinctness, indeed, even of their own ideas, has shown itself throughout the debate. They have so long been accustomed to speak a language of *constitutional courtesy*, which had no correspondency to the truth of things, that, even in this eleventh hour, they cannot disentangle themselves from the fallacy of their own terms; they cannot lay aside, at a crisis even like the present, the *façon de parler* of the theoretic Constitution.

It is in this respect that the debate in the House of Lords has risen so far above the force of that in the Commons, that the public, without being precisely aware of the cause, have been almost startled by the difference. In the House of Lords, *an approximation has been made to the actual verity*. Persons of observation, who had not, perhaps, clothed their own ideas with language, found it suddenly done to their hands; and they were enabled

to understand themselves. An actual impression was made — a tangible material for argument was given.*

If we were not now in actual peril from the results, it would be surpassingly ludicrous

* "He knew it was the theory of our Constitution that the two houses of parliament,—the one possessing its privileges by inheritance, and the other elected by the people,—were supposed to be equal in legislative power. That was the theory; but in practice, even with respect to the present House of Commons, it was *not true*. If that branch of the legislature were engaged in a struggle with the others, it would prove too hard for both together. It was only by the abuses of the Constitution, as they are called, that the due balance was maintained, and the evils which would arise from the superiority of the popular branch of the legislature, prevented, or at least mitigated. It was only because the Crown and the House of Lords had an influence in that of the Commons, which was wholly unacknowledged by the theory of the Constitution, that the Constitution had been maintained."

"Is the House of Commons to be so constituted, that if an election were to take place amidst such strong feelings and opinions,—no matter how absurd they might be,—all who opposed them were to be driven from office and honour, and to be deprived of the means of serving their country?"

"He did not pretend to anticipate all the consequences which would follow from this measure. But there were some, and those of the most important nature, of which he could entertain no doubt. In the first place, it would prevent the carrying on of the government. He did not mean to say that there would not be the name of a government; but the same permanent government, carrying on the same *system* of measures, could not continue. It would be blown about by every gale, and would reflect every change and caprice of public opinion."—*Lord Dudley*, Debate, Oct. 5, 1831.

that book-makers in succession should have expended their strength in lauding the practical excellence of a Constitution which had attained whatever it did possess of practical excellence precisely by a total departure from that theory of action to which they dotingly attributed it. And yet Montesquieu, Blackstone, and De Lolme, are the books which statesmen themselves have applauded, and recommended to the rising generation. *Quos Deus vult perdere, prius dementat.* They are now reaping the bitter harvest of the folly they have themselves helped to sow; they have brought public opinion to a position to which the very leaders of the measure are compelled to succumb in inward bitterness;—for what must be the secret feelings, at the present moment, of the elevated individual who, a few short years since only, wrote the *Essay on the History of the English Government and Constitution!* What must be the spectral imagery with which *some* of the pages of that book must haunt his sight!

The inconsistencies and untenable positions into which the long-indulged habit of tampering with a fallacious theory as if it were a sound

one, leads political writers and speakers, are endless. Lord Erskine, in his *Defences of the Whigs*, speaks of Reform in Parliament, "however in heart or soul devoted to it," as a thing to be yielded or denied entirely according to the state of the times, and the patience and respect with which the people would wait for and receive the boon. Now either the theoretic right of the people to "a full and fair representation," in other words, to an exclusive occupation of the House of Commons by their own representatives, is a real right, or it is not; while Lord Erskine, in effect admitting it to be so, treats it in the same breath like the toy of a child, to be given out or withheld for the day, according as he is ill or well behaved. A Constitution which cannot weather an occasional fit of bad humour, must surely be a very faulty one! So Lord Grey, who had been selected by the association for Parliamentary Reform, denominated "The Friends of the People," to bring before Parliament their celebrated declaration drawn up by Sir Philip Francis,—after the excesses subsequently committed by the reformers of the Constitutional and Corresponding Societies, and the inter-

vening events of the Continent, declared, "with regret, that from circumstances which unfortunately had occurred since he originally considered the subject, he should not, perhaps, be prepared at once to propose the same extended alteration in the representation of the people as he had formerly proposed in the House of Commons;" in other words, that what a few years before had been represented *as the Constitution,* it would then be dangerous to concede; and consequently, that if it *had been* the practical Constitution, that Constitution would then have periled the country. Any person who had time to give himself to the occupation, might extract from the writings and debates of British statesmen such a series of discrepancies and inconsequences, originating in their habit of thinking and speaking, in reference to the Constitution, as if two incompatibles were both true, as the records of no other country upon the earth could furnish.

It will be seen from the following pages that the writer is neither Whig nor Tory,—that neither 'Reformer' nor 'Anti-Reformer' would define his school of politics,—but that he is a

disciple, or promoter, whichever the reader may choose, of the nascent school of *inductive politics*, or *observational* political science;—a science, which, leaving on the right hand and on the left all conventional principles which have hitherto been accredited, to be ultimately adopted, or rejected, as scientific judgment and resolution alone shall decide, seeks first, and above all things, to elevate the vague and notional element of political philosophy to the rank of the certain sciences, or, as they are felicitously denominated by French authors, "*les sciences d'observation.*" His business he represents to himself to be, not to reject *or* idolize the wisdom of his ancestors; but to stand upon their shoulders, and try how much further he can see. Wedded to no party in politics, and having nothing to seek from any,—abominating, from the very bottom of his heart, the politics of irresponsible power, and having waged as implacable a war with those politics as ever private individual did wage, during the whole course of Lord Castlereagh's administration,—he has given ample security to those who know him that despotism never shall enlist him under her banners; and if any of them should suspect that his sentiments on the present subject are influenced

by his connexion with the Institution in which they were delivered, he will make no other reply to such a supposition than by the insertion below of an extract from a confidential letter written to a private friend, and most zealous advocate of the Reform Bill, in November, 1830, when his connexion with that Institution had not commenced, even in name.*

* "These are not times for the mind to rust in; and, on many subjects, my perceptions have advanced a whole age within a few years. But my anxiety increases with my power of sight. My heart was never more earnestly devoted to the cause of reform—but my confidence in its accredited means is *gone*. Names have no longer a spell for me. Reform in Parliament is to me nothing more than the exchange of one *system* for another—removing, along with the present system, its own evils—over-taxation, and prostitution of patronage; exchanging them for the jeopardy, still more critical, of an abject government, unconducted any longer by the power of a few gigantic and dedicated minds. Having found that Parliament is incapable of *adjudicating*, we are now going to see whether it is capable of *governing*. Go, and ask the wisest and the deepest statesmen of America how things are going on *there*, and they will tell you that their wisdom and profundity are held at the mercy of the superficialism and conceit of the half-witted statesmen of Congress. This is the price which America pays for her comparative freedom from taxation, and her patronage of merit; as *our* profligate taxation and parliamentary jobbing have been the price *we* have paid for independence and individuality in our government. This sadly increases the dilemma of our own position; for even were we to change our condition to that

In reference to the *prevailing* state of the public mind at the present period, the writer begs to observe that there are certain universal facts, connected with the formation and action of human opinion, which escape observation in a very mischievous degree, from the want of a more intense and habitual attention to mental philosophy than has yet distinguished this country.

One of those universal facts may be thus stated :—

There are cycles or periods in most things connected with human affairs, within which the tendency of moral or political evil is almost constantly in ONE *direction.* The line of projection is not a "zig-zag," but a continued diagonal;—or perhaps it is still more like that peculiar inflection known to seamen under the

of France, it is not all the inoculation of society with the most citizen-like feelings and language that would prevent the most disastrous practical consequences from the follies, and caprices, and ignorance of a parliamentary government, or that most fitful of all things, a government of public opinion.—Mark my words. An English parliament, with the powers of the executive government wholly in its own hands (if it ever gets to that), will, in five years, make a great fool of itself, and bring the country into a state of greater distraction than it has ever been in yet." (J. J. P. to J. A. Esq. 20th Nov. 1830.)

denomination of "lee-way;" requiring a continual correction of the ship's reckoning to keep her in the desired course. Evil may, in this view, be considered as lateral pressure, exerting a constant force upon the direction of human affairs, and compelling them to take a course compounded of their true way, and the impulse impressed upon them *à latere*. Now, any given cycle will probably last out many generations of the human race; and during the whole of that cycle,—all the activity and all the forces of the human mind will be directed towards the examination, consideration, and counteraction of the given evil;—an experimental familiarity will be acquired with all its modes of action, its sources, and its direct and indirect influences;—a language will be constructed referential to it;—and the mind, intensely concentrated on the hopes and means of extinguishing this present evil, will have little disposition or curiosity for the investigation of the alternative or opposite evil, and acquire scarcely any acquaintance with its phenomena, its modes of action, or the means of qualifying or arresting them.

It would be thus (and I believe is thus)

with medicine, in regions where, from local causes, diseases are almost invariably of the inflammatory type; and where the almost sole business of the practitioner is to lower the vital forces. The complicated evils arising from the *habitual* depression of those forces in cold and humid atmospheres, would be unknown and unhandled; and if it were possible suddenly to exchange the climate, the health of the population would be immediately thrown into a state almost as unprotected as if the medical faculty had been removed from the country. Several generations must pass before a complete mastery of the new maladies would be acquired, or their modes of prevention be fully known. Even in the present age of medical science, and in the very neighbourhood of the metropolis, instances have, I believe, occurred, of ague suddenly presenting itself in places where it had been previously unknown, and of the medical men of the spot actually not knowing how to treat it.

The general and long-continued prevalence of *excess* in the force or influence of the Crown, or Government, as the constituent evil of the political world, (an evil which, under

various modal varieties, this country has been struggling with, with few interventions, from the period of the Norman Conquest, and which struggle has given a colour and character to the whole literature, language, and mental material of the nation,) has wrought as perfect an example, probably, as the world can afford, of the fact in mental philosophy above adverted to; and under the influence of which, this country is now following in the wake of the Continent of Europe at the middle of the eighteenth century, with even yet more problematic chances of success, because the moral sciences have been far less extensively cultivated in this country than they had been in many parts of that Continent at the period in question. "During this period," writes Von Savigny, "the whole of Europe was actuated by a *blind* rage for improvement. All sense and feeling of the greatness by which other times were characterised, as also of the *natural development* of communities and institutions,—all, consequently, that is wholesome and profitable in history,—was lost: its place was supplied by the most extravagant anticipations of the present age, which was believed to be destined to nothing less

than to the being a picture of absolute perfection. This impulse manifested itself in all directions: what it has effected in religion and government is known; and it is also evident how, everywhere, by a natural reaction, it could not fail to pave the way for a new and more lively love for what is permanent. * * It would be very erroneous to ascribe this impulse to any false teachers in particular: it was, with some highly honourable exceptions, *the opinion of nations.* It was, therefore, *not in the power of the governments to ward off all the effects.*"*

By the *blind* rage for improvement above spoken of by one of the most talented writers of Germany, I understand a rage for improvement, and consequently for innovation, unaccompanied with that previous mastery of the practical philosophy of existing institutions, and that cool, and deliberate, and scrutinizing investigation of proposed changes, which can alone ensure the reality, as well as the name, to measures of "Reform." Assuredly it is not to the feverish excitement of minds intensely directed upon the evils which spring up under

* *Von dem Beruf unserer Zeit zur Gesetzgebung*, 1816, as translated by Mr. Hayward.

an existing system,—fed and exasperated by the daily contributions of a hundred party journals,—and knowing nothing, by painful forethought or keen investigation, of the alternative evils of the system which they seek in exchange,—that we can look for this security. It can only be to minds which, while untainted by the corrupt motives of the profiters by corruption, are capable of taking a fair and philosophic view of the amount of evil *inherent* in all human systems, of estimating the *excess* beyond that amount in the system which exists, and of calculating the *plus* or *minus* in that which is proposed for substitution, that the prerogative is granted of truly exercising the liberty of prophesying.

The writer is perfectly aware of the rancour with which the doctrines maintained in the following pages will be treated by a portion of the public press (if they condescend to notice them at all); and he is perfectly indifferent about it, so far as his own character or reputation is concerned; since he does not write for the many, but for the few; and he has been too long familiar with *the press*, both as an agent and a patient, to have much sensibility to its operations. It is as easy for

the press to *victimize*, as it is called, as it is for a steamer to run down a wherry; and if the latter could be done with equal impunity, "Father Thames" would witness fine sport. But there is this difference. The power of the press is mainly conferred upon it by the pusillanimity of the public; and it will fall from its hands as soon as it becomes a general feeling that, under a reign of intellectual tyranny,—as fearful in its tendency, and as necessary to be resisted, even to the death, as the worst acts of the Tudors or the Stuarts, —it is as honourable to become a victim of moral assassination, as it *then* was to be empaled before the Star Chamber, or the High Commission Court. Such is the character of *irresponsible* power, into whatsoever hands it falls; and so are we made the victims, in succession, of opposite elements of evil;—like the wretches who leap from the burning deck, to find a grave in the yawning deep below!

The writer has but one other observation to make. It is proper he should state that this publication is in no respect official. The Council of the College are in no way answerable for its sentiments; for it was not known to any one of

them, at the time the Course was commenced, whether the author was going to teach the highest Toryism, or the most ultra Radicalism; except so far as they might depend upon his good sense to do neither. In the present preface, it will be at once seen that he has wholly dropped his official character, and has written with all the freedom of a private individual;—a freedom which he ventures to think the circumstances of the times more than justify—they demand.

J. J. P.

23, Southampton Buildings,
Chancery Lane,
March 31, 1832.

LECTURE I.

Gentlemen,

It is not my intention to encroach, in any great degree, upon the business of the present Lecture, in continuation of the subject of my opening address; upon which, fortunately, the opinion of those present seemed to go with me almost unanimously. But there was one other point which I intended to have noticed while standing before the professional public, and which I shall take advantage of this occasion to notice shortly now; not as it concerns myself personally, for I am not weak enough to suppose that the public have any interest in that; but as it concerns a matter in which I think the public *have* an interest,—the character of our profession.

When, in the summer of last year, I mentioned, among some individuals of my own circle, my intention of sending in testimonials for this chair, I found a general disposition among professional men, (and, among them, men

of the most superior understandings,) to dissuade me from so doing, on one or other of the following grounds :—

1. That the office of a Law Professor was undesirable for a practising lawyer; for any one, in short, but those who had nothing else to do.

2. That it was one of doubtful utility to the public.

I made no defence at the time to either of these objections; but, having answered largely to the last in my opening lecture, I now wish to speak briefly to the former.

The objection, I apprehend, means this :—the object and motive of professional life being gain, and a large income the *summum bonum* to which alone all exertions are to be directed, and practice being the best source of that, whatever interferes with practice is a deviation against which a man is to be cautioned by those who wish him well. Political ambition is an exception, admitted upon recognized grounds, on account of the high stakes with which it deals; but all other deviations, *extra viam*, are injudicious and undesirable. This, I believe, is one of our professional axioms; and, when I was about to violate it, I really had as great an outcry raised against me as if I were falling into some insane delusion.

Now I am not going to commit so great an indecency as to insinuate, or even, more dex-

terously, to leave it to others to infer, that I was actuated by higher or more disinterested motives than those recognized by the profession of which I am a member. It is perhaps impossible for me to determine, even in my own mind, how far motives, equally terminating in self, were mixed up with that desire for utility, which the universal passion, self-esteem, might teach me to represent to myself as my governing inducement.

But what I wish to take occasion to say, in reference to this principle of professional policy, is this:—that I do think we are arrived at an age of the world, when there is a novel amount of call made upon men to look in many other directions for motives of action besides that refined, but ever-calculating self-interest, which has, for so many centuries, secretly governed the world, amidst all its social blandishments, and all its routine benevolences. I think we are arrived at an age when a man may fairly and rationally, and without being considered to have a reversionary interest in St. Luke's, propose to himself some other principles of action besides those of personal advantage. I think he may propose to himself any object not merely a phantasma; not simply fanatical; be it only the opening of a light into a covered way,—the setting up of a fence round an obscure pitfall,—the levelling a dangerous stump in the long grass,—the doing any thing, or attempting any

thing, in short, whereby the world may, perchance, even, walk more wisely or more profitably.

If there be one thing, more than another, that contemplative and solitary habits have forced upon my mind, as the want of the present age and race of mankind, it is the want of more diffused and more cultivated motives of action; and when I hear so many and so lofty assertions made by the English bar of its high-minded and honourable, and, as some say, *honorary* character, I cannot shut my eyes to the very measured respect, not to say discountenance, in which it holds all paths but the paths of fortune and political greatness; and I am sometimes compelled to look back to the character which history has recorded of the French bar, in the days—alas! long since gone—of its moral grandeur and moral altitude; when it stood before the world as a public spectacle of true nobility of character and lofty self-denial; and I am driven to compare such men as Dumoulin, and even his disciple and admirer, of more recent times, the late President Henrion de Pansey, with the not less talented, but certainly less disinterested character, of the bar of this country. For when I call to mind the splendid *éloges*, which it was the habit of posthumous friendship and admiration to pronounce upon the more eminent of these men, I cannot but be struck with the small account which they make of the

attainment of office, or professional honours or emoluments; and that it is far more often made tributary to their glory that they were "libres des entraves qui captivent les autres hommes;" that they were "trop fiers pour avoir des protecteurs,—trop obscurs pour avoir des protégés;" that they were "sans esclave et sans maître;" that they were vestiges of "l'homme dans sa dignité originelle." And if there be one object, next to that of its immediate design, which I could desire to see accomplished by the increasing institution of law professorships in this metropolis, it would be the dissemination, among the rising generation of the profession, by their means, of some intermixture of those views of human life which lead men to find rewards, not only in the paths of fortune and greatness, but in those also of self-denying utility and moral elevation, associated with recondite and extensive learning. In the chambers of the practitioner, to which legal education has hitherto been confined in this country, the student has little chance of imbibing any other sentiments, or having any other spring of human conduct in action before him, than the mere desire of professional eminence; but when he meets his professor within the walls of a college, he may, unless the latter greatly underrates his duties and his influence, be led to regard learning in its connexion with the contemplative faculties, with philosophical enlargement of views,

and with the general cultivation of the intellectual, and, with it, the moral life and character.

Gentlemen, towards the conclusion of my opening Lecture, I stated to you that, in consequence of recent and most successful researches into our constitutional antiquities, a new historical learning was rising out of the ruins of the old. It was my intention to have added, had I had time, that it appeared to me that a new *rationale* was as imperatively called for in reference to its modern periods. Arguments upon the British Constitution are, at this day, in a predicament which, perhaps, has no parallel in the history of argument. The propositive or theoretic constitution of Great Britain (if it ever existed in a pure state, which is very doubtful,) has ceased to have any existence for upwards of a century and a half—has, for upwards of a century and a half, been superseded by a totally different machinery; but the fact has never been PUBLICLY recognized or recorded,—the substituted constitution has never been formally reduced to proposition; no De Lolme, or Blackstone, has descanted upon *its* virtues, or pointed out *its* defects; and a sufficient number of the forms of the old constitution have been tenaciously observed, to satisfy all persons who think merely by rote, that a government by separate and independent estates of King, Lords, and Commons, was,

with certain irregularities or corruptions, still the government of the country.

Now I maintain, that to represent what have become merely the existing *forms* of the constitution, as the actual conditions under which the powers of government are exercised, and which constitute the real securities against misrule, is not only to speculate upon the want of acumen, and of mental activity among the persons so instructed, but to sow the seeds of, perhaps, misplaced discontent and disaffection among those, who, having eyes to see, find the existing phenomena daily and hourly giving contradiction to that representation. Such a proceeding might have been comparatively free from mischief in the days that are now past perhaps for ever, when the community were prone rather to take certain things on trust than to examine for themselves; but it is mischievous in the highest degree in an age in which inquisition is made in all things, sufficient at least to detect all superficial fallacies, though rarely profound enough to arrive at the actual principles which lie hidden below the surface of those fallacies.

I intend, therefore, when I come to the rationale of the constitution, to treat of it upon the basis of its *realities:* namely, that, for the last 150 years at least, there have been two concurrent, but essentially different constitutions, existing in this country, though without any

EXPRESS recognition of the fact; the one in substance, the other *in form* only;—that, during all that period, the powers of government, which were previously carried on principally by force of the prerogative, have been essentially and substantially exercised and carried on in the House of Commons, as the great public council, and thence in the face of the country; which has thus come to take a part, and exercise a voice, in every act of the cabinet;—that, as a necessary condition to the concurrent preservation of the *theoretic* constitution, in which the supreme power is supposed to reside in the three co-equal elements, of the crown, the aristocracy, and the commonalty, each of those elements has come to be *represented* (by whatever means that were effected, and it is no part of my business to defend the means,) in the Commons' house of parliament, in which the supreme power had concentred; and that, as a consequence, collision between these several elements, *out of the house*, has no longer happened, except on extraordinary occasions, because their battles have been fought, and their trials of strength made, *in the house*.

Gentlemen, this is the only ground upon which we can find the solution of all the paradoxes, the discrepancies, and the inconsequences of the English Constitution, in its modern form. The real government of this country unquestionably is, or has been, a commixture, contri-

bution, or combination, of the three elements of the constitution in the Commons' house of parliament, as the arena of government; each being represented there, with different degrees of preponderance, as time and circumstances have brought to pass. This is acknowledged *here* and *there, now* and *then,* by many; but no writer will broadly lay down this ground, and follow it out in all its innumerable consequences, although it is as capable of demonstration as any proposition in Euclid.

I intend in one of my Lectures to follow out the evidences of this tacit or undeclared constitution; and, at the same time, to contrast them with the instances in which the forms of the accredited constitution have been scrupulously preserved.

Gentlemen, I assert, that without this help, every attempt to define the present constitution of this country will be abortive; because it will at every step be disproved by the adduction of the phenomena. We shall be told (as we are by Blackstone and others) of an executive or *law-executing* government, whose business is to carry into effect the behests of the legislature, or *law-making* government; but who, by some strange misconception of their functions, if those be they, do invariably throw up their offices as soon as that law-making government manifests an unequivocal difference of opinion with themselves, as to *what is to be*

legislated. We shall be told that the legislative power of the crown resides solely in its veto, or power of dissenting to the resolutions of the other two estates; and we should then recollect that no such power has ever been exercised for 140 years, namely, since the bill for triennial parliaments; so that a fundamental part of the constitution should appear to have been surrendered. We shall be told, in the language of Paley, that "the balance of power in the constitution consists in this: that there is no power possessed by one part of the legislature, the abuse or excess of which is not checked by some antagonist power, residing in another part; and, that the power of the two houses of parliament to frame laws is checked by the king's negative;" and yet we should find so accomplished a constitutional writer as Mr. Hallam, describing that exercise of prerogative as one "which no ordinary circumstances can reconcile, either with prudence, or *with a constitutional administration of government.*"—(Hallam, Const. Hist. iii. 202.)

We shall be told, that (with the exception at least of bills of grace) the crown has no *initiative*, or power of proposing laws to the other two estates, but a power of rejection only; yet we shall find every bill of any great importance introduced by the immediate servants of the crown, *in their official characters;* and not only that, but (as it is currently admitted

in debate) on their responsibility too; responsibility which only belongs to them as *officers of the crown,* and which, *as members of parliament,* they do not possess. We shall be told that the king, as a branch of the legislature, can know nothing of any resolution of parliament, till it has passed both houses of the legislature; and, that it is when the bill, embodying the resolution, is presented to him, that his function for the first time accrues of acceptance or of rejection: and yet we shall hear the first minister of the crown broadly admitting, that the pre-assent of the king is implied to a bill brought in by his own confidential servants.

I cannot but think that one of the great errors that has been committed in this country is, that statesmen,—men practically acquainted with the carrying on of government,—have not seen the prudence of making the community acquainted with the real principles and machinery of practical government, but have kept it in their own bosoms as a sort of *arcana,* or hidden knowledge, (as the practice of medicine was kept fifty years ago); as if it were something that it was unsafe to let the public look into. The consequence has been an increasing want of community of feeling and understanding between statesmen and the public; when, on many points, had the public been adequately instructed or initiated, they might, perhaps, all

have gone together. Besides, the public *will* have notions, *will* have ideas, on all subjects, and *will* act upon them; and, if you trouble not yourself to give them materials for accurate notions, they *will* take up ideal ones; and you may arrive at a period when the public shall have travelled so far, and shall have taken up such a position with ideal notions only, that all the powers that you can bring into the field shall not be able to dislodge them from that position, or prevent their making a dangerous or even destructive assault upon you from it.

Upon this point, statesmen appear to have adopted that position of Lord Bacon, in which, speaking of government, he says, "It is a part of knowledge secret and retired in both those respects in which things are deemed secret: for some things are secret because they are hard to know; and some, because not fit to utter." But this is an inquisitorial age of the world, in which few facts can remain concealed from the public eye; and if the public becomes familiarly acquainted with the insulated facts belonging to a system of government, without being co-extensively acquainted with the *rationale* of those facts,—the organism to which they are incidental,—it is scarcely possible that they should take the same views of them at which statesmen arrive.

Gentlemen, the Baron De Staël,—the son, I believe, of the celebrated female writer of that

name,—in his very sensible work, entitled, *Letters on England,* makes the following just observations :—

"Among the authors who have written on Great Britain, some have formed a systematic whole of its constitutional laws, agreeably to their own ideas; they have sought to explain their *origin* by *historical conjectures,* or to connect them by hypotheses more or less well-founded; *but they have neglected to observe the real state of things.* They have drawn an imaginary picture, in which some natural features, no doubt, are to be found; but the image is by no means a faithful representation. Others, on the contrary, have presented to us as simple facts, requiring no commentary, the most curious laws or institutions, to understand which seems imperiously to demand a philosophical explanation, and the reciprocal action of which is most difficult to be comprehended. Such in general," he adds, "is the course pursued by *lawyers* and *civilians.*"

It will be my endeavour to avoid both the defects which are here so forcibly pointed out, and, while I refresh your memories, and, I trust, add to your stores, on the facts of the constitution, to exhibit them in such a light as shall lead you to perceive their true philosophy; and by connecting those facts with which you may possibly be concerned as professional men, as well as members of society, with their origin

and history, to fix them upon your memories with greater impression than could follow any naked recital of them.

There is some singularity in having to define and expound the constitution of a government, which, among the more accurate writers upon governments and constitutions on the Continent, would certainly be classed among the non-constitutional governments, or representative governments without constitutions. Thus, for example, writes the Count Lanjuinais, in his chapter "Des Gouvernemens et des Constitutions," prefixed to his *Traité sur la Charte;*— "Government, even though constituted by the national consent," (he speaks of such, as distinguished from governments which invoke any other base, such as divine right, conquest, proprietorship, &c.) "is only *constitutional* when it is more or less developed, fixed, and limited by one or more constitutional laws; that is to say, when one or more laws, made or consented to by the representatives of the nation, or the nation itself, determine the nature, extent, and limits of the power public, so that this code shall be truly the supreme rule, and shall have *a specific character of stability* which distinguishes it from the ordinary laws." Now the British Constitution is not only without any code, charter, or fundamental law, in which its provisions or details may be collectively found; but those provisions, as indicated by usage and

by precedent, or specified by enactment, are undistinguished by that "*specific character of stability*," by which almost all the written constitutions of modern times have sought to distinguish fundamental or constitutional laws from ordinary laws; demanding for the alteration or modification of the *former*, a higher and greater solemnity than is required for the change or promulgation of the *latter*.

Of course, *no* constitution can be immutable, in the sense of secure from all possibility of violent change; as by revolution. But in a *legal* sense, constitutions may be immutable; and they have different degrees of legal mutability. Cicero, in his *Fragmenta Philosophica*, says, that a state should be so constituted that it might be eternal: *Debet enim constituta sic esse civitas, ut æterna sit.* Constitution-makers, who should persuade themselves that they had arrived at this perfection, might certainly make immutability one of the fundamentals of it, so that it could not be altered without dissolving the constitution itself: but it would be open to observation, that the same powers which established, could suspend or dissolve the constitution; and I see nothing that should prevent their repealing it, as it were, for the purpose of re-enacting it (as we should say) with the altered clauses; so that the immutability would be only *nominal*.

I know of no constitution that has actually

assumed this attribute of immutability; but many constitutions have taken a sort of intermediate ground, and have stipulated for further solemnities, and further guarantees, for alterations in the constitution itself, than those which are required for ordinary legislation. Thus the federal constitution of the United States provides, that amendments to that constitution shall only be proposed when two-thirds of both houses of congress shall deem it necessary; or on the application of the legislatures of two-thirds of the several states; in which case, congress is to call a convention for proposing amendments: and even those amendments are not to be valid, as part of the constitution, until ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths of them, as the one or the other mode of ratification may be proposed by the Congress. The ground which the federal constitution takes in this case is, that it ought not to be changed till it is very clearly shewn to be the *deliberate wish* of the people; and it imposes all these successive operations, in order that no question may ever be carried by surprise.

This is the provision of the federal, or general constitution; and provisions more or less similar are contained in the constitutions of the several states themselves, with one exception, viz. in that of Maryland, in which the ordinary legislature may pass bills, amending the

constitution, provided they be confirmed at the next session.

In the constitution presented to the king of France by the national assembly, in 1791, there are the following peculiar provisions on this head :—

"1. The constituting national assembly declares, that the nation has the imprescriptible right of changing its constitution; and, nevertheless, considering that it is more conformable to the national interest to employ, only by means provided in the constitution itself, the right of reforming those articles of it of which experience shall have shewn the inconveniences, decrees, that the proceeding by an assembly of revision shall be regulated in the form following:

"2. When three successive legislatures shall have expressed an uniform wish for the change of any constitutional article, the revision demanded shall take place.

"3. The next legislature, and the following, cannot propose the reform of any constitutional article.

"4. Of the three legislatures, who may afterwards propose any changes, the two first shall only occupy themselves on this object the two last months of their last session; and the third, at the end of its first annual session, or at the commencement of the second.

"Their deliberations on this subject shall be conducted with the same forms as their legislative acts; but the decrees by which they shall express their wish, shall not require the king's sanction.

"5. The fourth legislature, augmented with two hundred and forty-nine members, chosen in each department by doubling the ordinary number which it furnishes in proportion to its population, shall form the assembly of revision.

"These two hundred and forty-nine members shall be chosen after the nomination of the representatives to the

legislative body shall be terminated, and separate minutes shall be made of it.

"The assembly of revision shall be composed only of one chamber.

"6. The members of the third legislature which shall have demanded the change, cannot be chosen to the assembly of revision.

"7. The members of the assembly of revision, after having all pronounced, in a body, the oath, 'To LIVE FREE OR DIE,' shall take individually an oath to confine themselves to determine on the objects which shall have been submitted to them by the uniform wish of three preceding legislatures; to maintain, besides, with all their power, the constitution of the kingdom, decreed by the constituting national assembly, during the years 1789, 1790, and 1791, and to be in all respects faithful to the nation, the laws, and the king.

"8. The assembly of revision shall be bound then, without delay, to enter upon the objects which shall have been submitted to their consideration. As soon as their labours shall be finished, the two hundred and forty-nine members named in addition shall retire, without being able, in any case, to take part in the legislative acts."

In the short-lived constitutional charter of Portugal, given by Don Pedro, in 1826, the provisions for this purpose are as follows: —

"ART. 140. If at the end of four years after the constitution of the kingdom has been sworn to, it is known that some of its articles require reform, the proposal shall be made in writing. It ought to commence in the chamber of deputies, and to receive the support of one third of them.

"ART. 141. The proposal shall be read three times, with an interval of six days between each reading; and after the third reading, the chamber of deputies will deliberate if it shall be admitted to discussion; observing,

in every respect, the rules necessary for the formation of a law.

"ART. 142. When admitted to discussion, and the necessity of amending the constitutional article carried, the law will be expedited, and sanctioned, and promulgated by the king, in the usual manner: in this law, the electors of the deputies for the ensuing legislature shall be ordered to confer on their representatives especial authority for the proposed alteration or reform.

"ART. 143. In the first session of the succeeding legislature the matter shall be proposed and discussed; and that which is carried shall prevail for the change or addition of the fundamental law,—and, being joined to the constitution, shall be solemnly promulgated.

"ART. 144. That only is constitutional which refers to the limits and respective attributes of the political powers, and to the political and individual rights of the citizens. Every thing which is not constitutional may be altered, without the forms referred to, by the ordinary legislatures.

Other constitutions, as that of Poland in 1791, have contented themselves to assign periods of years, for the privileged consideration of political changes.

"Willing to prevent, on one hand, violent and frequent *changes in the national constitution*, yet, considering, on the other, the necessity of perfecting it, after experiencing its effects on public prosperity, we determine the period *of every twenty-five years* for an *extraordinary constitutional diet*, to be held *purposely for the revision, and such alterations of the constitution* as may be found requisite: which diet shall be circumscribed by a separate law hereafter."

It is proper to observe, that the mutability of the English constitution is considered, by

American jurists, to be one of its defects. Thus, Dr. Rawle, the author of a celebrated *View of the Constitution of the United States,* observes,

"This is admitted by English jurists to be the case in respect to their own constitution, which, in all its vital parts, may be changed by an act of parliament; that is, the king, lords, and commons, may, if they think proper, abrogate and repeal any existing laws, and pass any new laws in direct opposition to that which the people contemplate and revere as their ancient constitution. No such laws can be resisted or disobeyed by the subject, nor declared void by the courts of justice as unconstitutional. A written constitution, which may be enforced by the judges, and appealed to by the people, is, therefore, most conducive to their happiness and safety."

Gentlemen, the writers on our constitution, with whom we have hitherto been most conversant, have supposed that the germ of all our constitutional usages and forms was to be found in their Teutonic parentage; and they have mostly contented themselves to seek, among the records of the Teutonic tribes, for the illustrative learning. If our views of the subject were to rest here, the English constitution never could present, to an acute mind, any thing but an unsatisfactory problem. If it had been derived from the usages or institutions of any one tribe or family of nations, the probabilities are that it would at least have had a distinct generic character; that its features (like those of its tribe) would have been of a given order; that there would have been a

certain amount, however qualified, of systematic coherency in its various parts. To a close observer, on the contrary, the forms and notions of the constitution exhibit the indubitable marks of two opposed and unallied systems, running into intermixture, or rather *intersecting* one another. The English constitution is not even like the half-caste breed produced by the union of the European and the Indian: it is more like the fabled being of antiquity, in which the head and neck of a man are united to the trunk and legs of a horse. It never could be, that the titles and attributes with which our constitution invests the sovereign, could have grown out of a system in which the monarch was only the chief magistrate; a commander-in-chief in time of war, and a chief-justice in time of peace.

The more critical and successful researches of the present times have resolved the problem, in the manner most consonant to the *prognosis* of an acute philosophical intellect, by turning from the half-democratic institutions and notions of the northern tribes, to the dominion of the Cæsars, to the seat of empire at Byzantium, and to the notions and jurisprudence of the Provincials. The great German jurist, Von Savigny, may be said to have led the way, by demonstrating the continuance of Roman policy, and a Roman people far into the middle ages; and by shewing us how far from rightly

informed were our own Robertson, or even Gibbon. Our learned countryman, Mr. Allen, has followed out the clue, and has placed the regal portion of our constitutional history upon ground, I think, too solid and demonstrable to be shaken. And one of the most learned and popular of the antiquaries of the present day, Mr. Palgrave, has recently given in his adhesion in the following words:—"The rise of the royal prerogatives of the English kings out of the principles of the Roman jurisprudence, has been traced, with profound learning, by Mr. Allen. And after having long investigated the subject, I may, perhaps, be allowed to add my opinion, that there is no possible mode of exhibiting the states of Western Christendom in their true aspect, unless we consider them as arising out of the dominion of the Cæsars."

We have thus a new light of the greatest importance to assist us in revising and rearranging the phenomena of our constitution; as many of the problems of its earlier history become resolved by keeping steadily in view the two intersecting and struggling systems of general regal power *on the one hand*, and qualified chieftainship, restrained more or less by the presence and control of a national council, on the other. When to these two contending elements we add the due intermixture of that peculiar system denominated the feudal, and occupying a sort of intermediate position between the two, we

have in our hands the clue to all our more ancient constitutional principles and practice; and it may be fairly said, that if any one of these elements is abstracted, or an undue preponderance given to the others, then is the student misguided in his attempts to master this interesting and important head of legal and historical erudition. In this point of view, alone, we are, as it were, at an epoch in constitutional knowledge, which would of itself justify me in claiming some degree of importance for the course of Lectures which I propose to deliver during the present and ensuing month.

From want of due comprehension and estimate of these opposing and intersecting elements of our constitution, the majority of our constitutional historians have fallen into opposite errors. Hume, for instance, fixing his attention upon the regal portions of the constitution in its earlier periods, and contrasting them with the philosophical principles of government, and democratic tone of language, of modern times, has fallen into the error of representing the English monarchy, during the fourteenth and fifteenth centuries, as virtually absolute; while, on the other hand, the Whig historians, scrupulously selecting all the indications of the opposed system, and keeping out of sight the high language of prerogative, and the preponderance of monarchical forms, would have us believe, that the English constitution, in its

earlier periods, was almost more democratical than at present.

Now, persons who set out with an intention to support either of these systems or theories of the constitution, must necessarily garble or conceal those facts which are irreconcilable with their views; and instead of the constitution being recognized, as it really was, as a discordant intermixture of two clashing systems, out of which has gradually resulted (like the chemical product of an acid and an alkali) another system totally different from either,—there are, all through society, two opposite notions of the character and history of the ancient constitution of England; and unsound and futile arguments drawn from both.

LECTURE X.

Gentlemen,

In the portions of the present course which have been hitherto disposed of, I have, upon the whole, *avoided*, rather than *sought*, opportunities of making that course argumentative and opinionative: not because I had no opinions to express; nor that I, in any degree, doubted your disposition to give me a candid hearing; *nor* that I am disposed to undervalue the communication or discussion of opinion, where it is, in any degree, informed by science. On the contrary, I hold it to be a legitimate part of the business of an authorized public teacher, to suggest, and even enforce by argument, the opinions which his own dedication to the subject he teaches may have generated in his own mind:—provided, only, that he be *honest;* that he teach *his own* convictions, and not other men's biddings; that he be *ingenuous*, giving his own doubts and difficulties, and dealing *fairly* with opposed opinions; and that he be

cautious, and present not, in the warmth of first impressions, opinions, which more careful or more patient examination might have led him to reject.

But, Gentlemen, the limited duration of the present course, compared with the extent of the subject-matter, made me soon perceive, that if I were to indulge myself in any *frequent* intercourse of opinion with you, the course could never embrace one-half of its professed subject; and as a new and untried teacher, in a new and untried institution, I felt also that it would be in bad taste to draw as largely upon your faith in me as I might have been disposed to do, had we previously built up confidence and security here, by a long experience of qualities which were calculated to command or to merit it.

In those instances, therefore, in which I have felt it my duty to expose to you any current fallacies, I have generally preferred to support my positions by the arguments of some accredited writer, rather than by my own; and when those positions did happen to be in any degree different to what have been considered as the popular or liberal opinions upon the subject, I have been careful to satisfy you that I was not a party man, maintaining party opinions, by shewing you that my own positions were those which had been taken, *upon the same subject*, by some one of the most decided *Whig* authorities,—by Mr. Hallam, Mr. Allen, Lord

Erskine, or Lord John Russell. And I now again repeat, that, however I may have felt it my duty to oppose some doctrines which are very popular, and to maintain others that are equally unpopular,—that, for instance, which prefers a standing army to a national militia, or, in other words, prefers a nation of merchants, manufacturers, artisans, and husbandmen, *defended by an army*, to a *nation of soldiers*, or *would-be soldiers*,—there are no books which I am more content that you should take your politics and constitutional doctrines from, than Mr. Hallam's *Constitutional History*, and Lord John Russell *on the English Government*;—since you may find in those books, in conjunction with the most truly British feeling, and the most sincere detestation of misrule, ample materials for discovering and rejecting the fallacies and shallow conceits which talkers and writers by rote have handed down to us: and if there is one book more than another, which I should be anxious to have out of the way if I were a writer in what is now called the popular press, and were taking the unscientific and *ad captandum* line of argument which that press is now dealing in, that book would be Lord John Russell's *Essay on the History of the English Government and Constitution.*

But, Gentlemen, I am myself engaged, by the terms of this course, to instruct you not only in the *law* of the constitution, but in its *theory* and *practice*: and the time is now arrived

when I must enter at large on that part of the subject; since it is in vain to discourse on the history and functions of parliament, without regarding it, not merely as a machinery for ordinary civil legislation, but in its relation to the general administration of the government, and the exercise of the political functions of the state.

Now, Gentlemen, I am here in a great strait. There were *two* courses open to me to pursue; neither of them free from formidable objections. I might have concealed my own sentiments and opinions on the subject, and echoed here, in merely *varied* TERMS, the fatuitous propositions which have been copied by one writer after another upon the theory of the English constitution, with the firm assurance in my own breast, that no such constitution exists in this country; and that when it did exist, it was under a *fundamental* difference in its modal conditions, which we now wholly overlook. On the other hand, by rejecting the received theories of the constitution, and presenting, in their stead, positions which have not yet obtained the stamp of the writers of what are called standard books, or consequently obtained any *general* reception in society, I incur the risk of being charged with arrogance, and of measuring my own powers of discernment against those of men of far greater name and eminence than I have any prospect of ever attaining to.

Gentlemen, the first of such courses,—that of repeating, as a public instructor, a theory which, though accredited, I hold to be wholly fallacious, might be the *safest;* but I deem it to be utterly unworthy of an individual who is placed in the position in which I stand here, in a great scientific and academical establishment, and who is improperly so placed if he cannot be trusted to deliver *his own* sentiments upon the subjects which he teaches, as well as explain those of others.

Gentlemen, I am not going to argue either *for* or *against* the Reform Bill: first, because I do not yet know, certainly, any more than any body else, what the effect of that bill will be upon the *real* or *practical constitution* of this country, as distinguished from the non-existent theoretic one; secondly, because I should, probably, have no common language with either the opposers or maintainers of it; and thirdly, because I do not choose to incur the imputation of making this College a place for the agitation of party politics. All I mean, then, to say, is this:—that when we *were* about an important and delicate measure of change in the structure of our constitution, I think it is much to be lamented that we had not previously ascertained what the *real* theory of our constitution was, and what were the elements of which that and other constitutions were *really* composed, if by constitution is meant

an actual mode or system of government; and if that is *not* meant, what *is* meant by the word constitution?

Gentlemen, there are two sorts of theory, as there are two sorts of philosophy. There is the theory or philosophy which *prescribes* laws and principles of her own devising; and there is the theory or philosophy which *ascertains* laws and principles, by learning to observe. It is a wise remark of Rousseau, cited in the valuable little tract on the *Rights of Industry*, which has recently appeared, that "it requires a great deal of philosophy to observe what is seen every day." My own impression is, that it is the rarest of all philosophy; while "the greatest of fallacies are those abstract propositions, involving imaginary conditions to which nothing actual really corresponds, and which, unlike a general fact, (which is true on the average, and therefore in a majority of particular facts,) is true of no particular case, is never realized."*

Gentlemen, I can conceive, that, in a country which has a *written* constitution, the *writing* may still, in one sense, be denominated the constitution, although, by process of time and gradual departure, a different and undeclared mode of carrying on the government may prevail in practice; but in a country which

* Eclectic Review, January, 1832.

has *no* written constitution, the constitution of that country can only be learnt by ascertaining the real mode in which, from time to time, the government has been carried on, the powers by which it has been effected, and the checks which have been brought into action.

There is only one other sense in which the word "constitution" can be used; and that is a sense in which it *ought* to be used with great caution, from its great liability to falsify the arguments associated with it, although, unfortunately, this caution has not found its way into practice.

As there may be a constitution which is virtually and truly the theory of the government itself; the conditions *upon* which, and the means *by* which, its powers are exercised; so there *may* be a constitution which is merely the formal and lifeless mechanism from behind which the veritable powers of government are put into motion, and which, like the pretended clockwork of the automaton chess-player, serves rather to *conceal* than to *declare* the real agency which is employed. What, gentlemen, would be *his* error, who, mistaking that artificial mechanism for the living agency, should proceed to alter and rectify the works, till he had placed their action beyond the control of the vivid intelligence by which it was really regulated?

Gentlemen, there are certain propositions laid down by Blackstone, by Paley, and others,

and echoed throughout our whole political literature, as constituting the theory and principles of the English constitution.

The more important of these may be stated to be as follows :—

That Great Britain is a country *governed by laws;* and that the sole power of *making* those laws resides in the legislature, or triune institution of king, lords, and commons; which is, consequently, the *law*-MAKING *government,* as the king, with his ministers, and officers of state, is the *law*-EXECUTING *government,* or, for brevity, the *executive.*

That each of the three branches of the legislature, or law-making government, is essentially independent of the others; and, as it is asserted by Blackstone, "if ever it should happen that the independence of any one of the three branches of the legislature should be lost, or that it should become subservient to the views of either of the other two, there would be an end of our constitution."

That the balance of power in the constitution consists in this: that there is no power possessed by one part of the legislature, the abuse or excess of which is not checked by some antagonist power residing in another part. Thus, the power of the two houses of parliament to frame laws, is said to be checked by the king's negative; that if laws, subversive of regal government, should obtain the consent

of parliament, the reigning prince, by interposing his prerogative, may save the necessary rights and authority of his station. On the other hand, the arbitrary application of this negative is said to be checked by the privilege which parliament possesses of refusing supplies of money to the exigencies of the king's administration. Again, the constitutional maxim "that the king can do no wrong," is said to be balanced by another maxim, that the illegal commands of the king do not justify those who assist, or concur, in carrying them into execution; and, by a second rule, subsidiary to this, that the acts of the crown acquire not a legal force until authenticated by the subscription of some of its great officers; and that all who either concur in an illegal order, by authenticating its publication with their seal or subscription, or who, in any manner, assist in carrying it into execution, subject themselves to impeachment and punishment; and are not permitted to plead or produce the command of the king in justification of their obedience.

These, Gentlemen, are the leading features of that theory of the constitution, which what are called standard books have presented to you, and which we hear daily argued upon, both in and out of parliament.

The first of these is, "that Great Britain is a country *governed by laws*; and that the sole power of *making* those laws resides in the

legislature, or triune institution of king, lords, and commons; which is, consequently, the *law*-MAKING *government;* as the king, with his ministers, and officers of state, is the *law*-EXECUTING *government;* or, for brevity, the *executive.*

The fallacy concealed in this position, is that most important and fatal one in fundamental propositions, of mistaking a *part* for the *whole.* Government is made to consist of the two portions denominated *legislative* and *executive,* and its functions to be *comprehended* within the law-*making* and the law-*executing* departments. It would be just as accurate to describe a man as consisting of a trunk and limbs.

"Government," in modern times, designates a totally different thing from the same word applied to ancient times. In reference to ancient times, it means, mainly, if not exclusively, rule or discipline. It means the issuing of orders, or *mandatory* laws; the enforcing of personal obedience, or, in default, the infliction of personal punishment. In modern times, these functions of government have, in constitutional monarchies, become fallacies: "abstractions involving imaginary conditions, to which nothing actual really corresponds." The administration of justice has (very advantageously) diverged into a separate function, distinct from the government; and the nation, instead of a family under a *parens patriæ,* has become a great commercial, agricultural, and

manufacturing community, the government of which consists, not in rule, but in *administration.* Popular language, indeed, losing sight of theory, and conforming itself in this instance to facts, has denominated the government, "the administration." But it happens in this, as in other things, that terms and ideas, which are applicable to one stage of society, become riveted on a science, and follow it down to a stage of society when they have lost all their practical truth, but are yet found, by the force of habit, to govern reasonings, and influence notions. There is no greater obstruction in the world than this, to the advancement of human intelligence.

It is perfectly clear, when we come to look at *things* stedfastly, instead of being satisfied with the *sound* of *words,* that neither the making of laws, (or civil legislation,) nor the executing of the laws which are already made, constitute more than *a portion* of the functions of political power. Parliament, if we watch its operations, will be found very frequently engaged in functions which are not legislative; and the administration will be found engaged, still more frequently, upon functions which are not executive.

But I may, perhaps, be told, that in the term, legislative power, is intended to be included *all* the deliberative functions of parliament. Gentlemen, this would only render the existing

theory still more absurd. The accredited theory of the constitution assigns the business of legislation to *parliament indiscriminately:* it does not confer the right of introducing bills or projects of law, nor yet subjects of debate, upon any particular person or persons; and even, in point of practice, bills *may be* introduced, and motions made, by any individual member of the legislature who chooses; that is to say, by any one of 658 individuals in the House of Commons, and 408 in the House of Lords; and such bills are of precisely the same validity, if passed, as bills introduced by the executive government, or king's ministers.

We have only to apply this theory to the business of the *administrative government,* and to suppose that government carried on by the *undisturbed means* which this theory of the constitution has pointed out,—*legislation casually and promiscuously originated,*—to see, with one glance, that a greater absurdity never entered the heart of man. Administrative government has become the most profound, and the most complicated, of all sciences. From the extent and intricacy of its material, it mates and masters the most powerful intellects; while, from that very extent, and the inability of the human mind to grasp all its relations and dependencies, or to contemplate more than a portion of the whole field,—that portion with which the particular observation or experience of each has

made him most conversant,—it furnishes room for a more endless diversity and gradation of opinion than is to be found in any other science founded upon induction.

Now, in all sciences,—in medicine, in mathematics, in chemistry, in astronomy, in law,—we find not only the most various measures of capacity, and power, among the professors, but we find, in each, a very few minds capable of penetrating immeasurable distances beyond even the range of the highest order of *ordinary* minds, and upon whom, in each of those sciences, an ascendency or superiority devolves, which is strictly consonant to the nature of things, and which is only an extension of the same principle which gives ordinary intelligence and information an ascendency, or superiority, over dulness and ignorance. One man *can* do that which another man *cannot* do; and that is the whole matter. Any system, then, of government, which should not adequately provide for this superiority or ascendency of gifted individuals, by conferring upon them adequate power to give effect to their own talents in the administration of the *scientific* part of government, would overlook the conditions under which all other sciences are carried on, and which are essential to their prosperity.

That any such power exists under the theoretical system of the legislative government, in

which it is not made the business of any one individual, or class of individuals, to control, or even influence, legislation, and in which the most delicate and difficult questions of political science are left "to be voted up and down by fluctuating majorities," I suppose no one will be hardy enough to assert.

If he did, I should remind him of the complaints which were made by the ministers of King William III., during a portion of his reign, (in which, by the bye, this country was very near being upset,) that "Nobody knew one day, what the House of Commons would do the next."—(Dal. Mem. Append. p. 240.)

If, however, we turn from the *theory* of the constitution to the *facts*, we find a *totally different state of things*, which has not even a remote likeness to the theory. We find, instead of any such chance-medley or fortuitous legislative government as that supposed by the theory, a highly organized system, which is not fully described in any book that I have ever met with.

We find both houses of parliament constantly divided (in the main), into two great parties, designated as the ministerial and the opposition parties, or the majority and the minority; for the terms are convertible, or nearly so. We find the executive government, or administration, alternately selected from the leading and most talented men of the one or the other of

these divisions, as they acquire the ascendency, with the exception only of certain occasional deviations from this principle, when a partial amalgamation takes place, which goes by the name of a *coalition*,—a measure generally somewhat unpopular. We find, that no sooner is an administration formed, than it immediately takes upon itself not only what is properly called the *executive* government, but another and much more important function, not recognized by the theory of the constitution — the management, control, and direction, of the whole mass of political legislation, according to its own views of political science and civil economy;— that, although some scattered portions of legislation are gladly left by this over-burdened administration to private individuals, who are desirous, either through vanity or public spirit, of signalizing themselves as legislators, — yet that even this is done, as it were, by the connivance of the administration, or *government*, as it is emphatically called; and that it follows, as a necessary consequence, from government being always in the majority of the House of Commons, that no private individual could carry any measure through parliament which government should see reason to oppose, — so that a single intimation of such intention at once compels the private legislator to drop or withdraw his measure;—that even this connivance at private legislation is not considered constitu-

tional or becoming, when the measure is one of political importance, as it is deemed not merely the *right*, but the *duty* of government, to take upon itself the responsibility of introducing such measures into parliament; and government has even been severely reprimanded, by leaders in opposition, for abandoning that duty to others;—finally, that as soon as, from any circumstances whatever, government, or the administration, shall be deprived of the power of so managing, controlling, and directing the course of political legislation, by a change of the majority into the minority, or find sufficient reason to apprehend that they *shall* be deprived of that power, they do, according to the actual course of the constitution, resign office, upon the express ground that *they* can no longer carry on the government *advantageously to the country;*—and that, so far from doing that as an act of offended greatness, it would be esteemed politically *dishonourable* and *improper*, if they were to *retain* office after the support and adhesion of a majority in the House of Commons should have been unequivocally withdrawn from them. Now, gentlemen, there is not one word of all this in the standard theory of the constitution, although it has been going on ever since you and I were born; it was going on all the time that Mr. Justice Blackstone was living, and for a long time before that; and although, if we were to go far enough back to

lose sight of this system of *parliamentary* government, we should lose it in a system, if it be possible, still more unlike that of the theory,—*prerogative government*, or government carried on *out* of parliament, by the *Court*, or the *Privy Council*, or the great *officers of state*, amenable rather to parliament for their misdeeds, when grievous, than sharing with them the business of political management.

Here, then, to begin with, is a total discrepancy between the theory and the facts. Either the executive government has merged into the legislative, or the legislative has merged into the executive; and we shall have, by and bye, to inquire which of these is the fact.

This brings me to the second proposition of the theory: viz. That each of the three branches of the legislature, or law-making government, is essentially independent of the others; and, as it is asserted by Blackstone, "if ever it should happen that the independence of any one of the three branches of the legislature should be lost, or that it should become subservient to the views of either of the other two, there would be an end of our constitution."

Now, gentlemen, if "*there* would be an end of our constitution," *there* HAS been an end of our constitution long before the time when Mr. J. Blackstone wrote; for no such *essential* independence then existed, or has ever since existed, except in physical or external form

merely; and when it did exist, if that can ever be said to have truly happened, the constitution contained the additional term which he has wholly overlooked,—a *prerogative* administrative government, carried on *out* of parliament.

Gentlemen, I was *not* prepared to find my own theory laid down, in even stronger terms than *I* should have ventured on, as long back as the year 1807, in the organ of the Whigs, the *Edinburgh Review*. But so it is. I had written down to this point of my lecture on Saturday evening last, when, growing tired of writing, I took up a volume of the *Edinburgh Review*, of which I had accidentally purchased a set the day before. After turning over a volume or two, I arrived at the following, in Vol. X. p. 411.

"As we are of opinion that a good deal of misconception exists as to the true nature and operation of this famous constitution, we shall avail ourselves of this opportunity to make a few observations with regard to it.

"Every community may be considered, with relation to its political rights and interests, as divided into three great natural classes or orders:—*first*, those who are actually in possession or administration of the government, including the sovereign, and all subordinate functionaries or office bearers;—*secondly*, those who, without office or exertion of their own, are born to the inheritance of a certain property, and accompanying rank and influence;—and, *lastly*, the great body of the people, and especially those among them who, by

talent, industry, or popular qualities, are aiming at the acquisition of office or influence. These are the three natural partitions of all societies which have existed in a separate form for any considerable length of time. They are naturally in a state of political rivalry; and the character of the government will depend upon the preponderance which is assumed by any of them.

"In almost all the modern European governments, this rivalry terminated in a sort of compromise; and a constitution was adopted, which allotted to each of these three orders a certain fixed share of political power and authority. In England, it is well known, it led to the balanced government of King, Lords, and Commons;—a balance which has changed its original mode of operation, but which still subsists in effect, and maintains the freedom and permanence of our constitution by its subsistence. It is to the nature of the change which has taken place in its mode of operation, that our attention should now be particularly directed.

"At first, these three orders had *separate* functions and privileges, which they exercised separately and successively,—frequently with very little concert, and sometimes with considerable hostility. While the royal establishment was supported by the royal demesnes, and the exercise of the prerogative,—while war was carried on by the military service of the king's tenants *in capite*, and the business of legislation for the whole kingdom did not occupy three or four weeks in the year,—this absolute partition of the business and privileges of the three orders was in some measure practicable; and the constitution was in reality very near what it has ever since been represented in theory. In process of time, however, when the business of government became more complicated and operose, the greatest inconvenience must have been experienced from this entire separation of the three estates of which it was composed; and some expedients must have been devised

for giving them a greater sympathy and mutual contact in their proceedings. It never could have been but most injurious to the state and the country at large that the House of Lords, for example, should throw out, by a great majority, an important bill which the House of Commons had passed by a great majority—or that the king should reject, with indignation, a law which had received the decided approbation of both houses of parliament. It would appear most desirable, therefore, that these vindictive and curative checks, which could never operate without giving a certain shock to the whole machine, and impairing, for the time, its strength and apparent security, should be converted into preventive checks, that might produce the same effects, without any commotion or disturbance. It would naturally come to pass, therefore, that an attempt would be made to apply the whole of that resistance which any legislative measure was likely to meet with, in the first instance, if possible; to avoid the shock, by anticipating its operation; and to bring all the forces to bear upon every proposition from the beginning, to the operation of which it would otherwise be exposed in succession. Thus, if a measure to which the lords were adverse was proposed in the commons, it would be desirable that the reasons and the influence which produced their hostility should be directed against it in that house; and if a measure, from which the sovereign was resolved to withhold his acquiescence was proposed in either house, it would, in like manner, be desirable that this repugnance should be disclosed in the course of their deliberations, and matters prevented, if possible, from coming to extremities, by the interposition of the royal *veto* on a measure zealously patronized by the parliament.

"It must have been felt, therefore, as infinitely desirable, and necessary indeed for the tranquillity of the country, that some means should be devised for bringing the parties together before things had got this

length, and of employing the different tendencies of the royal, aristocratical, and popular influences, rather to modify the measures of government in their concoction, than to counteract and oppose each other afterwards, by each successively undoing what had been completed by its associates. But the necessity of such a congress would scarcely be felt, before it would become evident that it must take place in the House of Commons. The popular influence could not possibly obtain a place in either of the other branches of the government; while it must at all times have been difficult to prevent their influence from affecting the elections of the commons. Whenever an inducement was held out, therefore, for them to extend that influence, and for the country at large to connive at it, there is no doubt that it would be silently exerted to the effect of placing in that house a multitude of members devoted to the support of the public functionaries for the time, and of the views and interests of most of the great families in the kingdom.

"This we conceive to be the present state of the government: and the result is, that the balance of the constitution now exists, in a great degree, *in the House of Commons;* and that that assembly possesses nearly the whole legislative authority.

"That such a balance does exist in the House of Commons seems undeniable, upon the slightest consideration of its composition. It contains, besides the immediate and most essential ministers of the crown, a considerable number of persons who have notoriously obtained their seats through that influence. It contains, also, a very considerable number of persons who have been elected through the influence of certain peers or great families; and, finally, it contains a large proportion of members returned without any such influence,—or in opposition to it,—in consequence of their reputation or popularity with the majority of their electors. There are here, then, indisputably, all

the elements of that famous constitutional balance, of King, Lords, and Commons, by which it is admitted that the freedom and stability of our government are maintained; and there seems to be no reason for supposing, that they should not act at least as beneficially when brought together, and fairly confronted in this manner, as when merely overawing and frowning at each other from their separate orbits. It is impossible to deny, that, according to the present constitution of the House of Commons, the crown, the executive government, or the ministry, has a great influence in its deliberations; and that this influence is secured by some sort of interference, more or less direct, in a variety of elections. It is equally undeniable, that most of the great families in the kingdom have a similar influence, obtained by a similar interference. These things, indeed, are not officially avowed; because they form part of a tacit compact to which none of the parties are formally bound; but they are perfectly notorious notwithstanding: and the actual administration of our government certainly cannot be defended, unless they are both admitted and justified. Even Mr. Cobbett would be entitled to laugh at the bullying and cowardly evasion of an angry denial.

"The advantages of this arrangement are, as we have already intimated,—that the collision and shock of the three rival principles, is either prevented or prodigiously softened by this early mixture of their elements,—that by converting those sudden and successive checks into one regulating and graduated pressure, their operation becomes infinitely more smooth and manageable, and no longer proceeds by jerks and bounds that might endanger the safety of the machine,—while its movements, instead of being fractured and impeded by the irregular impulses of opposite forces, slide quietly to the mark, in the diagonal produced by their original combination.

"We have stated already, that the prospect of these

advantages probably operated, in part, to produce the arrangement which ensured them; but it was dictated, no doubt, by more urgent considerations, and indeed, as we think, by a necessity which could not be resisted. The great object to be accomplished, was not so much to save the House of Commons from the mortification of having their bills stopped by the lords, or rejected by the sovereign, as to protect these two estates from the hazard to which they might be exposed from the direct exercise of this privilege. By the vast and rapid increase of wealth and intelligence in the country at large, the consideration and relative authority of that branch of the government which stands most in connexion with it, was suddenly and prodigiously enlarged. The very circumstance of its being open to talent and ambition, ensured a greater proportion of ability and exertion in its members; and their numbers and the popularity of their name and character, all contributed to give their determinations a degree of weight and authority, against which it would no longer have been safe for any other power to have risked an opposition. No ministry, for a hundred years back, has had courage to interpose the royal negative to any measure which has passed through the houses of parliament, even by narrow majorities; and there is no thinking man who can contemplate, without dismay, the probable consequences of such a resistance, where the House of Commons had been zealous and nearly unanimous. It is needless to say, that the House of Lords would oppose a still feebler barrier to such a measure of popular legislation. In order to exercise their constitutional functions with safety, therefore, it became *necessary* for the king and the great families to exercise them in the lower house,—not *against* the united commons of England, but *among* them; and not in their own character, and directly,— but covertly, and mingled with those whom it was substantially their interest and their duty to control.

"It is thus, as it appears to us, that the balance which was in danger of being lost through the increasing power and influence of the lower house, has been saved by being transferred into that assembly; and that all that was essentially valuable in the constitution has been secured by a silent but very important change in its mode of operation. This change we take to be, that the influence of the crown, and of the old aristocracy, is now exerted in that house by means of members sent there to support that influence; and that, in that house, as the great depository of the political power of the nation, and the virtual representative of the whole three estates, the chief virtue and force of the government is now habitually resident.

"This last conclusion, we are persuaded, will not appear either rash or hazardous to those who consider the exclusive power which is now almost formally yielded to the House of Commons, with regard to the supplies; and the admitted impossibility of going on in the administration of the government, without the support of a decided and permanent majority of its members. Nor does it follow, by any means, that the other branches of the legislature, though precluded, in a great measure, from the direct and avowed exercise of their constitutional privileges, are altogether useless in their separate capacities. By their formal subsistence and cooperation, they serve to remind the commons of the rights under which they interfere in their deliberations, and give greater weight and authority to that interference. They are there in reserve, too, in case of any sudden or violent attack upon their new mode of operation. This, at least, seems the chief use of the king's negative in the present state of the constitution. The House of Lords has a separate and higher utility, as a second and more dignified senate, by whose deliberations, all matters of importance may be expected to be matured and purged still more completely from any dregs of passion and popular prejudice which may

have adhered to them after passing through the lower house. It gives time for enthusiasm to subside, and another chance for argument to be effectual. There are very strong reasons, in short, for preserving the separate and official functions of the King, and the House of Lords, as members of the legislature, independent of the alarm and suspicion which would be reasonably excited by any proposal for suppressing them. We are clearly convinced, that their constitutional functions have long been exercised with benefit and effect in the House of Commons alone; but it would indicate a very dangerous passion for innovation, to propose that they should be restrained from their exercise in any other place.

"If there be any truth or soundness in the principles of which we have ventured to delineate this hasty and imperfect sketch, the reader will be at no loss to discover the grounds of our objection to Mr. Cobbett's fundamental measure of reform, and the reasons for which we must resist any attempt to remove all placemen or other dependants of the executive from parliament, or to exclude altogether the interference of great families in elections. We think, a certain infusion of these elements in that assembly essential to the existence of our mixed government; and should consider the accomplishment of such a reform as Mr. Cobbett contends for, as the signal for its instant destruction."

Gentlemen, this able development of my own theory, in a work of such high character, induced me to look further; and in Vol. XIV. p. 300, I found myself at home again.

"We took the liberty, on a former occasion, to say a good deal upon this subject; and after observing that the whole substantial power of the government was now manifestly vested in the House of Commons,

we proceeded to shew that the balance of the constitution was preserved, and could only be preserved, by being transferred into that house; where a certain proportion of the influence of the Crown, and of the great families of the land, was advantageously, though somewhat irregularly, mingled with the proper representation of the people. The expediency, and indeed the necessity of this arrangement, we should humbly conceive, must be manifest to all who will but consider the distractions and dreadful convulsions that would ensue, if the three branches of the legislature were really to be kept apart in their practical operations, and to check and control each other, not by an infusion of their elementary principles into all the measures of each, but by working separately to thwart or undo what had been undertaken by the other, without any means of concert or co-operation.

In the first place, it is perfectly obvious, that if the House of Commons, with its absolute power over the supplies, and its connexion with the physical force of the nation, were to be composed entirely of the representatives of the yeomanry of the counties and the tradesmen of the burghs, and were to be actuated solely by the feelings and interests which are peculiar to that class of men, it would infallibly convert the government into a mere democracy, and speedily sweep away the incumbrance of Lords and Commons; who could not exist at all, therefore, if they had not an influence in this assembly. But even supposing that this consequence would not immediately follow, is it not obvious, in the second place, that if the House of Lords and the Sovereign had no means of influencing the determination of the Commons within their own walls, they could only control them in the exercise of their legislative function, by throwing out or negativing the bills which had been passed by the unanimous assent of that house?—Now, there is no man, we believe, who can hesitate as to the consequences

of such a mode of control as this. If the House of Commons were to send up a series of popular bills which were successively negatived by the Sovereign, the consequence would *infallibly* be, an insurrection and a civil war:—and if, on the other hand, he were to pass, as a matter of course, every bill which had been voted by a great majority of that House, at the same time that he and his servants had no influence over their deliberations, the control of the executive would be utterly lost and abandoned; and the government, as we have already said, would be changed into a virtual republic. It seems to us to be a matter of necessity, therefore, that the Crown should have a certain influence in the House of Commons. That of the nobility is still less irregular. In point of fact, indeed, the nobility of England are no longer distinguishable, as to their *interests*, from her opulent commoners; nor is there any intelligible ground for excluding the influence of the one, more than that of the other. If it be true, indeed, that the whole force of the government actually resides in the House of Commons, which we take to be obvious to every one who will take the pains to reflect upon it; it follows, that the Nobility, as well as the Crown, must either have something to say in its deliberations, or must have nothing to say in the government. Their separate functions serve other purposes indeed; but, acting in these, they could exercise no effectual control over the Commons, though they might provoke them to their destruction.

"These propositions might be copiously illustrated by the whole history of the English government, ever since the increasing weight and consequence of the Commons gave them an effective power in the proceedings of the legislature. While the Sovereign lived on his royal demesnes, and wars were supported by knights' service,—while there were scarcely any taxes, and the business of legislation was settled in a few days in each year, the House of Commons had little to do

but to vote a scanty supply, and sometimes to accompany it by a remonstrance of no terror nor authority. The Sovereign, in the first place, could do without the supply, if it should be actually withheld; in the second place, he could levy what he pleased, in a variety of ways, without the consent of that assembly; and, finally, he and his nobles and their retainers, for whose equipment it was wanted, could at any time easily overbear the whole House of Commons and their constituents, and compel them to yield whatever was demanded. This state of things lasted till the time of Henry the Eighth, or Elizabeth; down to which period, the constitution of England actually consisted of the separate and uncompounded elements of King, Lords, and Commons, each acting upon a view of its peculiar interest. The growing importance of the Commons, and the wants of the government, made a practical change necessary in the reign of the Stuarts; and the attempt to adhere to the theory of the constitution, produced the destruction of the monarchy and the death of the king. Mr. Laing, in his late accurate and profound history, has pointed out this distinctly as the cause of these unhappy convulsions. The King, he observes, ruined himself and the country, by standing on his prerogative, and neglecting the means of influencing the parliament. He made various efforts, indeed, to seduce and gain over the most formidable of the popular leaders in that assembly; but he chose, most absurdly, to proclaim his triumph, by making them immediately desist from that occupation, and enlisting them as the open advocates of his prerogative. Instead of submitting to receive the popular leaders as his ministers, and in this way bringing all the weight of the royal influence to bear through that commanding channel upon the parliament, he never promoted them to office till they had lost all power and popularity by an avowed desertion to the separate party of the King; and thus, by allowing the Commons to carry

every thing before them in their own house, and then opposing the naked walls of his prerogative to the full shock of that unbridled current, he invited a contest, that, even in those days, proved ruinous to himself and to the constitution. The same principle of misgovernment, aided indeed by baser practices on a baser generation, lasted down till the Revolution; when, as is universally acknowledged, the true principles of the constitution were first recognized, and the reign of *influence* and regular freedom began.

"With these impressions, then, not only of the harmlessness, but of the vital necessity of a certain infusion of royal and aristocratical influence in that assembly which virtually engrosses the whole power of the legislature, it will easily be understood, that we have no great indulgence for those notions of reform, which seem to be uppermost in the minds of some of its warmest supporters; and that we should consider such a change in the constitution of that house, as Sir Francis Burdett and Mr. Cobbett appear to think essential to its purity, as by far the greatest calamity which could be inflicted upon us by our own hands. These very able and eloquent persons, too, we observe, are fully aware of the consequences which we have endeavoured to connect with such an alteration; and, indeed, it is very remarkable, that both of them regard the revival or active development of the King's prerogative, as an important part of that beneficial reform, which they think would be effected by purging the Commons' House of all admixture of royal or aristocratical influence. Mr. Cobbett talks repeatedly of the irregularity of parliament interfering with the King's choice of his ministers, with which, he says, they have no more to do, than with the choice of his running footmen; and Sir Francis Burdett, in the speech which is before us, is reported, we observe, to have insisted very largely upon the benefits to be derived from restoring to the Sovereign the prerogative

of determining what burghs should be allowed to return members to parliament, and which should be deprived of that privilege. It is obvious, therefore, that they see clearly, that if this influence is to be destroyed in the House of Commons, it *must* either be renewed in the shape of prerogative, or the kingly and aristocratical elements must be altogether discharged from the constitution. It does strike us, we will confess, with astonishment, to find persons, of the force of mind and the knowledge of the gentlemen in question, seriously inculcating such strange and tremendous doctrine. To set the Sovereign of this country again to stand upon his prerogative, and to meet the encroachments of a democratical House of Commons, with no other aid than a set of ministers appointed without any connexion with that House, would be to expose the monarchy and the constitution to a fate infinitely more certain and terrible than that which fell upon them in the time of King Charles; while to allow *him* or his ministers to say, at every election, from what places members should or should not be sent, would evidently be to make *all* the burghs in the kingdom treasury burghs,—and, in fact, to place the whole body of the legislature under the absolute power of the executive. We find it difficult to believe that men of distinguished talents should be actually imposed upon by absurdities so glaring: — but it is yet more difficult and more painful to believe, that without being imposed upon, they should be capable of maintaining them to the public, even for the purpose of forwarding what they consider to be a patriotic object.

" If we apprehended, therefore, that the House of Commons would be freed from all but popular influence, by making the scheme of representation more comprehensive and more consistent, we should certainly be vehement against any such change in its present constitution. We have no fears, however, on this head; and are perfectly satisfied, that so long as

the administration retains any considerable share of its present patronage, and so long as the great families retain their popularity and riches, there will always be a due proportion of their influence to prevent that omnipotent assembly from being guided by the feelings of only one class of the community. There is a very tolerable proportion of that influence even among the *county* members of the parliament as it now stands, such a proportion, perhaps, as would be sufficient for the average of the whole house:—and by raising the qualification of an elector, both in the counties and in the burghs, this aristocratical influence would be made rather greater over the whole kingdom, than it now is in the counties.

"The only difficulty with which it appears to us that this great question is attended, arises from the circumstance of this interference of the Crown and the Nobility in the representation of the Commons, not being *avowed* or *regulated* by the public law of the land. It is practised in a sort of covert and underhand manner; and this gives an appearance of guiltiness to the thing itself, which naturally embarrasses those who are called on to defend it, and excites a natural apprehension of its danger and illegality. If the thing, however, be proved to be actually beneficial, the argument drawn from appearances and presumptions must be admitted to be sufficiently answered. But the truth is, that there is a twofold reason for those appearances—one drawn from history, the other from a feeling of expediency. The exercise of this influence was gradually resorted to by the king and the nobles, as their only defence against the annihilation with which they were threatened by the formidable increase of the popular power; and it was naturally practised in secret, that it might not be defeated by the interference of that great rival. Even after it came to be universally known and recognized in practice, it was not thought either necessary or safe to subject it

to any formal regulation, both because this could not be done without distinctly acknowledging it as a legal and constitutional practice in itself, and because it was of such a nature that no limitation, which admitted at all of its existence, could possibly be effectual. To have attempted to limit the amount of this influence, therefore, would really have been to increase and encourage it beyond the bounds which necessity had assigned to it. If the King were allowed openly to return ten members, and the nobility as many, the only consequence would be, that they would obtain those twenty members *beyond* what they now have, and get the present number more easily elected into the bargain. It would be like a permission to smuggle a certain quantity of any commodity, or to publish a certain number of libels in the year; the infallible consequence of which would be, to increase the average quantity of smuggling and of defamation by all that quantity. If there be a contraband, therefore, that is necessary to the comfort of the country, or a certain quantity of reviling that must have vent, the wiser policy is, to keep up the law, and connive at its violation within certain limits. It is a breach of privilege to publish the speeches of members of parliament; yet it is highly proper, and we will say necessary to the freedom of the country, that they should generally be published. It has not been thought necessary, however, to recognize this right in a formal manner; but the practice is commonly connived at,—at the same time that a power is retained of repressing it, when it may appear to be tending to any abuse: the reason is, as in the case before us, that it might be dangerous to grant an unlimited sanction, and that it is impossible to fix on a just limitation. It is equally criminal, in a political point of view, to give a seat or a vote out of gratitude for personal favours, or out of deference to a parent, or affection for a son, as it is to give them for a sum of money. The gradations by which motives of

this kind slide into mere subserviency or venality, are too fine to be made the subject of regulation; and a tacit permission of what is inevitable, is found to be the best way of retaining the power of checking what may be prevented."*

Gentlemen, these fortunate discoveries have very materially lightened my labours during the remainder of the present course; because, had I not met with them, I should have had to work out all these points, as they existed in my own mind, with very inferior powers of pen, and with far greater liability to suspicion.

I beg, however, that I may not be called a Tory, merely for taking the same views of the constitution of this country which, thirteen years ago, were promulgated and repeated again and again, by the leading Whig journal of the age.

Upon some of these points it is curious to see how *a little light* has broken in upon the minds of some of our standard writers, without their being able to follow it out, and resign themselves to its guidance. Thus we are told by Paley, that the power of parliament over the supplies, &c., has enabled it so to enforce its resolutions upon any other subject, as to render the king's dissent to a law which has received the approbation of both houses, *too dangerous* an experiment any longer to be advised; while, a few pages further, we again

* The whole of these passages was not read in the lecture.

fall into the old theory of mutual checks, and we are told that "the power of the two houses of parliament to frame laws is checked by *the king's negative;* so that, if laws subversive of regal government, should obtain the consent of parliament, the reigning prince, by interposing his prerogative, may save the necessary rights and authority of his station." So that, according to his statement of the case, taking the whole together, the parliament cannot exceed their power, because of the king's *veto;* but the king cannot exercise that *veto,* because the power of refusing supplies would render it too dangerous to be advised.*

The real truth is, that these, which were at one time considered as practical checks in the constitution, have come, by change of circumstances, to be merely principles of extreme application, the resort to which would be indicative of an approaching dissolution of the constitution itself; and which, therefore, cannot with propriety be represented as *elements* of the constitution.

We must look, therefore, for other checks, and other controlling powers, besides those

* The reader can hardly fail to be reminded of the extraordinary stage position which is brought about in *The Critic,* when Puff exclaims, "There's situation for you! there's an heroic group! You see *the ladies* can't stab Whiskerandos; *he* durst not strike *them,* for fear of *their uncles;* the *uncles* durst not kill *him,* because of their *nieces.* I have them all at a dead lock; for every one of them is afraid to let go first!"

which the theory of our constitution points out; and we shall probably find the whole resistance to ministerial preponderance in the constantly increasing, I had almost said overwhelming power, of public opinion.

Gentlemen, before we part, I would beg to say, that you would wholly mistake me, if you suppose, from any thing I have propounded, that I underrate, or think lightly, of the moral corruption and iniquity by which the transmutation of the constitution I have pointed out, has been partly accomplished. I think, on the contrary, that it is one of the most appalling considerations with which political studies make us acquainted: and I think the great problem for the next generation, when they shall have to re-construct our constitution, perhaps out of its ruins, will be how they can secure adequate stability to the government, without corruption and moral debasement; and how they can secure liberty, and freedom from misrule, to the people, without destroying the power of government to prefer scientific truth to popular infatuation and popular ignorance.

LECTURE XI.

GENTLEMEN,

Some proverb-maker, I forget who, says, "God hath given to some men wisdom and understanding, and to others the art of playing on the fiddle."

In this primary and important truth, a truth wholly overlooked by the inventors of the *accredited* theory of our constitution,—a theory which supposes all legislation, and all legislators, equally good,—which supposes Signor Paganini, should he choose to lay out some of his earnings in a naturalization act and a seat in parliament, as competent to lead the House of Commons as to lead the orchestra of the Opera House,—in this primary and important truth, I say, may be found the origin and the necessity of that *practical* development of our constitution, which, in my last Lecture, I exhibited to you as the substitute for the celebrated but non-existent theory; — a theory upon which Blackstone, and Montesquieu, and De

Lolme, have descanted with as much rapture as Petrarch did upon his Laura, who is believed by some to have been an imaginary person also.

The *practical* machinery of our constitution may be described as a very successful and highly organized system for securing the political government and civil administration of this country to the most talented men of the great parties into which this country has long been divided; a system which has enabled the government to be carried on with a *steadiness*, a systematic character, and a demonstration of power, which could otherwise only have belonged to an absolute monarchy, in the hands of a highly talented sovereign, or powerful minister; instead of being blown about by every gale, and reflecting every change and caprice of public opinion. The character and attribute of the constitution of England has been to bring within its own sphere, train up in its bosom, and render subservient to its stability, all the transcendent talent, all the enlightened information, and all the increasing knowledge of the country; while, by carrying on the chief powers of government in the face of day, namely in the House of Commons, a degree of freedom and participation in the government has been secured to the people, which no system of checks could have given them, if that government had been carried on, as before the Revolution, in the dark conclaves of the Court and

the Privy Council. This enables us to understand what is meant by the *Edinburgh Review,* in one of the extracts I read to you, when it speaks of the Revolution as the period at which the reign of *influence* and *regular freedom* began.

It is true that the question what is the best way of governing a distinguished people of opposite opinions and multifarious interests is not one of easy discussion, nor one upon which even the most talented men are likely, at all times, to agree. There is one fallacy, however, against which we must guard ourselves. We must not measure the real difference of opinion that would exist between public men in this country, *cæteris paribus,* by the conventional vehemence and ferocity of condemnation with which the proceedings of the party *in power* are always attacked, in parliament and out of parliament, by the party *out of power;* and of which, the leading object is, of course, to increase the chances of exchanging places with them, by lowering their majorities *in* the house, and their popularity *out* of it, as much as eloquence, declamation, and a show of the highest indignation and condemnation, can effect. We must not overlook the little variation in the course of government which has usually taken place after a change of ministers; and how repeatedly it has happened that an opposition have found themselves, when in office, compelled to support and maintain the very things, and

to use the very measures, which, when out of office, they had been hottest in the condemnation of.

This system has, however, one serious evil contained in it, and which I cannot better describe than in the language which Mr. Palgrave has put into the mouth of an imaginary Anglo-Saxon, who is describing the machinery of the witena-gemot, or meeting of the wise, to an imaginary Norwegian stranger, and which you will find in the preface to his *History of England* in *The Family Library*:—

"Haco, mark my words:—if our *Witan* ever enter into long debates, consequences most ruinous to the state must inevitably ensue; they will begin by contradicting one another, and end by contradicting themselves. Constantly raising expectations which they never can fulfil; each party systematically decrying the acts of the other; the soc-men and churls, who compose the great body of the people, will at last fancy that the *witan* are no wiser than the rest of the community. They will suppose that the art of government requires neither skill nor practice;—that it is accessible to the meanest capacity;—that it requires nothing but *parlement* or *great talk*;—and, leaving their ploughs and their harrows, armed with their flails and pitchforks, they will rush into the hall. They will demolish the throne; and, seizing the sceptre and the sword, they will involve the whole state in unutterable confusion and misery."

Gentlemen, the other evils which have been contained in this system, are those abuses which naturally result from the application, or, if you

like, the misapplication, of old institutions to new circumstances.

If those of our ancestors who invented the theory of King, Lords, and Commons, and supposed legislation, in those cases in which legislation was then necessary, to be carried on by the separate concurrence of these three estates, each consulting for itself, and rejecting, by its *veto*, such measures as were inimical to its interests, while the general or non-legislative government of the country was carried on solely by the king's prerogative, amenable to parliament only for its *direct* abuse,—if our ancestors, I say, who invented this theory, had been told of a state of things in which the exercise of the prerogative and of the general government, should be virtually transferred from the Crown to the party constituting the majority for the time being in the House of Commons,—and that that House should at the same time exercise the whole power of the purse, the independent revenues of the crown being at an end,—they would have seen at once that the balance of the constitution, instead of being contained in the three estates, must be organized in that house itself;—and, if they had the wisdom we give them credit for, they would have proceeded to construct some mechanism by which that balance should have been transferred into that house, without the help of that mass of moral corruption, and political prostitution, to which

the Crown and the Aristocracy have been obliged to resort to effect and preserve that balance, for want of such mechanism. It never could have occurred to our wise ancestors,—who knew what *they* meant by a constitution of King, Lords, and Commons, (which is more than *we* do,)—that the whole power could be given to one of those branches of the legislature, and the others left to shift for themselves, with a nominal existence only: all they would have said is,—"If you will have the battles of the constitution fought *here*,—in the House of Commons, instead of in the open field of the Constitution,—let us see that there is fair play; let us see that the Crown has not too many representatives, or the House of Lords too many, in this *House of Representatives*. Let us see that *all* classes of the people are fairly and sufficiently represented, and that the boat is kept trim, and the ballast even. But if the battles *are* to be fought here,—we must not first turn out all the combatants who are on one side, and then pretend to fight the battles among ourselves. If it comes to that, you must again resolve your constitution into its former elements. You must not only have *independent* estates, but you must restore to each of those estates the means of preserving themselves in their independency;—or else you will have committed a great fraud upon the constitution. You will have drawn the charge

out of your antagonists' pistols—and then you will call upon them to stand up like men and defend themselves."

Such, I believe, would have been the answer which would have been made by our great constitutionalists of past times, if it had been propounded to them to make that transmutation of the powers of the state, which has taken place since the Revolution; but the change has been made so insensibly, that the *ultimate* dilemma has scarcely been foreseen. I say scarcely, but with some qualification, because, in the discussions on the Constitution which took place in 1809, both Sir Francis Burdett and Mr. Cobbett appear to have regarded the *revival,* or active development, of the *prerogative,* as a correlative to the extinction of the influence of the crown and aristocracy in the House of Commons, though they do not seem to have directed their attention to the question whether that revival could possibly take place without a renewal of such civil wars as we had in the time of Charles the First.

Gentlemen, these observations, which are of too great importance to be omitted in a course on the Constitution, apply to the general question of the construction of parliament. Whether they apply or not to a measure now in contemplation, cannot be ascertained, till it is known whether that measure *really will* alter the balance of power in the House of Commons,

which, perhaps, can only be known by experience. I beg, therefore, to be understood as merely propounding them to you as the scientific elements, in reference to which questions on the structure of the House of Commons are to be considered,—and which would give you that superiority in argument and judgment which science possesses over sciolism. Whatever measures can be devised, which should have the effect of removing or diminishing the moral evils which have arisen from the misapplication of old institutions to new circumstances, without prostrating the principles of the constitution (those of *balance of power*) at the same time, I, for one, should hail as a great national blessing; and if it can be shewn me, in the result, that the present measure *does* that,—then I can only say that I am among the most zealous of its admirers. Whether it does it or not, I leave you all to judge for yourselves in the best manner you can. I am merely supplying you with materials for consideration, and directing your attention to what is the *real* constitutional question.

I shall now proceed at once to the historical details which belong to this part of the subject, in order to shew how, at the various periods of our constitution, the government has been carried on—what share in it the legislature has enjoyed—how that legislature has originated—and how it has arrived at its present position.

Much difference of opinion has prevailed among antiquaries, whether the origin of the British Parliament was to be found in the feudal system,—the *latter* feudal system I mean, introduced by the Normans; or whether it might not be traced to the witenagemot of the Anglo-Saxons, the provincial councils or assemblies of the Roman prefectures, or even, as some have contended, to the rude councils of war of the Cymri, or Britons, which are adverted to in a well-known passage of Cæsar's Commentaries.* This, like some others, is a controversy which would probably be terminated if the question were well defined. It may not be too much to say, that the provincial councils of the Romans, and those national councils which were common to all the Celtic and Teutonic tribes of the North, contained within them the *germ* of the parliament of England; but we should look in vain to the prototypes for the most important features of the latter, of which the pedigree must be sought in much later periods.

Of the Roman provincial councils, or senates, as it has been recently observed by a very learned and popular writer, Mr. Palgrave, "the constitution cannot be precisely defined. Some few particulars, however, may be collected. Deputies or magistrates from the cities attended

* *Summa imperii bellique administrandi causâ communi concilio permissa est Cassivelano.*—De Bell. Gall. V. 11.

them; the great landed proprietors had also seats; and perhaps the bishops were admitted after the establishment of Christianity. The Councils assembled in course, and at stated times of the year, unless any emergency arose, in which case they were summoned by the rescript of the Emperor. If local regulations only were required, the councils were authorized to enact ordinances; but in matters of importance, and especially if the Provincials needed the redress of any grievance, they could only address their *petitions* to the Emperor. The Prefect could not give his assent to such requests; and the 'Legates,' to whom the bills were intrusted, resorted for that purpose to the presence-chamber, or, according to the pompous phraseology of Byzantium, 'the sacred consistory;' and then the Sovereign, if he thought fit, acceded to their request.

"In point of form this proceeding was very similar to that adopted, in after times, by the Cortes of Castile, the States-general of France, and the Parliament of England. In all these assemblies the subjects *pray* to the King for redress, and the answer to their petition constitutes the basis of the fuero, law, ordinance, or statute. But the members of the Roman provincial councils could not employ any of those useful ways and means for obtaining the attention of the sovereign, which render the decent and humble language of supplication

virtually equivalent to a command. The Councils had no control over the supplies. With the exception of the '*aurum coronarium*,' a *benevolence*, voluntary in name but compulsory by inveterate custom, taxation resulted from the arbitrary decree of the Emperor; and to the edict by which the Cæsar imposed a tribute upon the world, the assent of the Provincials was neither expected nor required. The sovereign had nothing to hope from their gratitude; the minister had nothing to fear from their displeasure. An impeachment, under the entire management of the Prefect, was the only power of judicature which the councils possessed; and the laws which had been enacted upon their request, might at any time be revoked or rescinded, by the sovereign will and irresponsible declaration of the Emperor. In many parts of the empire, such as Narbonensian Gaul, these councils appear to have been engrafted upon the institutions subsisting among the conquered nations before they were subdued. Was this the case in Britain? The question is interesting, but difficult of discussion. It is sufficient to observe, that such local legislatures, however qualified their powers might be, contributed to keep alive a feeling of national or independent existence, and prevented those minor spheres of action, the provinces, from being merged in the vast orb of the empire. And, transmitted through the middle ages, they became ONE *of*

the elements, at least, out of which the Parliaments, States-general, and other legislative assemblies of modern Europe, were gradually formed."*

Under the Saxon octarchy, a degree of organized democracy prevailed, *in system and theory at least*, which is truly surprising for the time. I allude, of course, to their organism of motes, or district assemblies, for the hall, the ward, the borough, the hundred, and the shire, as well as their folck-motes, or general yearly assemblies, and their witenagemot, or national council convened by the king. I say *in system and theory at least;* because I do not believe, that in a semi-barbarous state, any such institutions did really produce the effects which their names and descriptions attribute to them, but that, on the contrary, every such assembly was, in reality, an arena for the exercise of sway and domination by some few overbearing and ready-spoken individuals; just as we see at this day in the meetings of country parishes, and small country towns. It is possible that the thanes, or barons, in the witenagemot, possessed some sympathies with their dependents, when *their* interests were identified in any degree with their own: and this we may call a *virtual* representation; but panegyric must proceed no further.

From the Anglo-Saxon laws, we may collect

* Palgrave, Hist. Engl. Vol. I. p. 15.

that in addition to the monarch, (who was an essential part of the witenagemot,) and his nobles, who consisted of the officers of state, the governors of counties, and large landholders; the archbishops, bishops, and great body of the clergy, (amongst which last were included abbots and sometimes abbesses, presbyters, and monks,) and the *seniores sapientes populi*, assisted at this council. Antiquarians, however, have never agreed as to the real character of this last order. Some have considered them to have been the judges; others, a class resembling the elders among the Jews; and others, the representatives of the boroughs, or what we now call the Commons.

The latter opinion is now exploded. "Very few, I believe, at present," says Mr. Hallam, "imagine that there was any representative system in that age; much less that the ceorls, or inferior freemen, had the smallest share in the deliberations of the national assembly. Every argument which a spirit of controversy once pressed into the service, has long since been victoriously refuted."*

"Undoubtedly," says Sir James Mackintosh, "there is no trace among the Anglo-Saxons, either of representative commoners, or of a peerage, like the modern."†

I mention these authorities, because Mr.

* Middle Ages, Vol. II. p. 389.

† Hist. Eng. Vol. I. p. 75.

Oldfield, in his *Representative History*, a book which is in many persons' hands, and one of the most delusive, perhaps, that ever was written, has laid great stress upon the fact of representation existing among the Anglo-Saxons. It may, however, "be safely pronounced, that the witenagemotes were of an irregularly popular composition." But I would here observe, that the arguments which are founded upon the presence of the *people* in the Saxon councils, and the frequent occurrence of such expressions as *populus—populus terræ—omnique populo audiente et videnti*, and *infinita fidelium multitudo*, in their laws, must certainly be taken as meaning nothing more than the bystanders,—or "multitude," as they are called in our translation of the New Testament; and that those expressions partake of the hyperbolic language of ancient times. Even to this day, the spectators at a coronation are treated as if representing the whole nation, and their acclamations as evidence of the national consent to receive the individual presented to them as sovereign.

Blackstone asserts, that without the consent of the witenagemot, no new law *could* be made or old one altered. It would not, perhaps, be possible to establish this as a constitutional principle; but the usage unquestionably was, of the Anglo-Saxons, as of other Teutonic nations, to make their laws with the advice and consent of national assemblies. Indeed, as observed by

Sir James Mackintosh, "the authority of a barbarous chief needs the support of inferior chiefs, and of their influence over the multitude; for, without it, laws and legal commands would be more likely to be scorned than executed."

That these assemblies possessed, nominally, very extensive rights, is unquestionable; but, as Mr. Palgrave has observed, after detailing some circumstances relative to one of them, "it is interesting to observe how influential, even at this early period, the gift of popular eloquence had become in England; and the detail of the motives which actuated the majority of the assembly, shews how little the prerogatives possessed by the English witenagemot were attended with any real liberty of suffrage. For, as we have seen, one man was bought, another was intimidated, a third talked over, and a fourth sent out of the country as a troublesome fellow, because he would not vote against his inclination or his feelings."*

Much mischief has been done to the right understanding of the constitutional history of this period, by the well-meant efforts of various writers to fortify the political rights of the community at the present day, by seeking to establish their complete existence in the remoter and irregular periods of the constitution. Thus facts and language have been wrested to a purpose

* Hist. Engl. Vol. I. p. 331.

which has frequently been quite at variance with historic truth. We may say of them, as Bishop Hurd, in the person of old Sir John Maynard, said of those who sought to shew the existence of a House of Commons in the British or Saxon annals, "Their aim was to serve the cause of liberty; but, it must be owned, at the expense of truth, and, as we now perceive, without the least necessity."*

We must now proceed to the change of dynasty which took place at the Norman conquest. And here I must call your attention to the mine of authentic constitutional learning which is to be found in a series of documents where we should scarcely be led to look for it,—I mean the *Reports of the Committees of the House of Lords upon the Dignity of a Peer of the Realm;* and still more, to the increased value which has been given to those reports by the digested form in which their results have been presented to us, and improved upon, by Sir William Betham, (the keeper of the records in the castle of Dublin,) in a volume published not long since, entitled, *Dignities, feudal and parliamentary, and the Constitutional Legislature of the United Kingdom.*

I have no hesitation in saying, that I think you will attain a clearer and more accurate conception of the real character of our early constitution from that one volume, than from

* Polit. Dial. Dial.V.

all the books upon the subject that have yet been written, put together; while it will enable you to correct a mass of fallacies with which our standard histories are impregnated.

"Writers on the history and constitution of England," as Sir W. Betham observes, "have fondly clung to the idea that from, and even before, the Norman conquest, there existed something like a popular, constitutional, and free government, and a representation of the people, which they imagined to have exercised the functions of legislation during the period of Saxon jurisdiction; continued, but in a modified and altered shape, in the reigns of the kings of the Norman race. Even the Lords' Committees were not free from the influence of this national, this patriotic infirmity; for they repeatedly admit they can discover no evidence of a popular, constitutional legislation, yet speak of the *constituent parts of the legislative assemblies* of those times."*

"The laborious and voluminous reports of the Lords' Committees contain a great mass of information; but it may be said to be of materials only,—mixed up, indeed, with reflections and arguments, but in such a form, that minds endowed with vigorous and strong powers of arrangement alone are able to digest them, after repeated readings, and the most painful investigation."†

* Page 1. † Page 3.

Hence these documents have not yet attained the credit of that importance and value which really belongs to them, but which Sir W. Betham's publication must certainly secure to them.

Gentlemen, Sir W. Betham observes, that the Conqueror, possessing paramount authority, could, and did, grant such liberties to his new subjects as he thought expedient;—that the charter of those liberties is extant in the Red Book of the Exchequer,*—and there can be no reasonable doubt of its authenticity,—and that, as in it is contained no grant to the people that their advice or consent should be necessary to legalize the enactment of laws, or that their consent should be necessary on any point but the granting of services or talliage beyond what was due by their tenures, we may justly conclude they possessed no other legislative power.

The grant of the laws of King Edward the Confessor, in the same charter, was an enactment of grace, and did not convey the *Saxon constitution*, if any existed, but merely the *jus privatum* which was in force before the Conquest.

From that time, however, the Conqueror was, in one sense, a king governing "according to laws," as we have it in the coronation oath; because, having granted *those laws* by his

* [See also the new edition of Rymer's Fœdera, Vol. I.]

charter, any violation of them was a breach of his charter.

In this sense we may observe that the emperors of Turkey were also monarchs governing according to laws; since the private rights of their subjects were regulated, in their Greek dominions, by the Basiliques, and in Turkey itself by the Ottoman code, of which you may find some account in the third volume of the *Thémis, ou Bibliothèque du Jurisconsulte.*

It followed also from this grant of the laws of Edward, that other laws, *ejusdem generis,* namely, laws affecting private rights generally, could not be imposed by the king without some sort of concurrence on the part of the nation to prevent a *breach* of the charter; and in this sense it may be true, as remarked by Mr. Hallam, that new laws, like new taxes, *affecting the community,* required the acceptance or sanction of those councils which were considered as virtually representing the nation. The legislative capacity, however, did not in any way reside in those councils themselves; the right of general legislation was undoubtedly placed in the king,—the council being the parties, as it were, dispensing with the breach of the charter; the charter having, in the one case, granted the laws of Edward the Confessor, and in the other, conceded that no new talliage should be made without the assent of the *commune concilium regni.* This would at first seem to intimate that an

assembly was to be called to express that consent; but many instances occurred, where the consent to an imposition was given individually, or by detached bodies or communities, as well as by a national council: and consent being the sole object, it mattered little how it was expressed,—the imposition of the tax was legal on all who assented.

It should also be observed that this exemption from *arbitrary* impositions was granted to the *liberi homines* only; that it is supposed, by those words, to comprehend only the military tenants of the crown; and that it certainly did not comprehend the *burghers*.

The Conqueror limited the power of himself and his successors only to the extent of the aforesaid consent, and to allow his subjects to enjoy the advantages of the laws of King Edward: in every other respect the king was absolute, and could do any thing not repugnant to the charter.

The *demesne* lands of the king, and all royal towns, were liable to talliage, an imposition at once rigorous and irregular. Talliages were continually raised upon different towns, during all the Norman reigns, without the consent of the councils, which neither represented them, nor cared for their interests.

With regard to these councils, the Lecture upon the feudal system has already informed you how they were composed, and what was

their nature, namely, that of a paramount feudal court. I will here add the words of the Lords' committees: —

"When in England, he commonly held *his court* three times in every year, at Easter, at Winchester; at Whitsuntide, at Westminster; and Christmas, at Gloucester; and the contemporary historians (professing to have known him personally, and to have been for some time at his court) add, 'et tunc aderunt ibi *archiepiscopi, episcopi, abbates, comites, et barones totius Angliæ.*' But though the persons thus enumerated are such as are *supposed* by many *to have formed the legislative assemblies* of the country, it does not appear from any existing document, that the assemblies thus ordinarily convened by the Conqueror at Easter, Whitsuntide, and Christmas, *ever* ACTED LEGISLATIVELY, unless the *commune concilium*, by which the obligations of the military tenures were sanctioned, and the *concilium baronum*, by which, as appears by the subsequent charter of his son Henry, the alterations in the laws of Edward the Confessor were approved, may be deemed to have been one of those assemblies, and so constituted; though they appear to have been generally convened by William for *purposes of state and dignity, and for the administration of justice rather than the legislative purposes.*"

"Henry the First," add the committees, "obtained the throne, as his brother William had done, in exclusion of his elder brother Robert, and *seems* to have endeavoured to give validity to his title, by what may *be deemed a legislative enaction.*

"A charter, issued by him on his accession, states that he had been crowned *communi consilio baronum totius Angliæ*, and historians have described a numerous assembly convened at London, previous to his coronation, of clergy and laity, *probably by his own*

authority only, in which he promised to grant this charter on his accession to the crown."

Upon this, Sir W. Betham justly remarks:—

"This could not be considered a legislative assembly: the only object appears to have been to give a sanction to Henry's title to the crown, and to receive a charter at his hands: for, if this was a legislative assembly, every coronation of a king of England may be considered a legislative meeting; for the assembled multitude are told by the archbishop, on all such occasions, that the late king being dead, he presents to them his rightful successor, and asks them if they will receive him as their king, which might be construed to imply that it was necessary to ask their consent, while it is merely a part of a ceremonial."

Gentlemen, Sir W. Betham proceeds to examine all the public documents of the succeeding reigns with the help of the reports of the Lords' committees, and he has summed up the result as follows:

"After a patient and careful examination of the Lords' reports, the ancient statutes, and the records of both England and Ireland, the conclusion forced upon the understanding is—that previous to the reign of Henry the Third, although the sovereign occasionally called councils, and asked their advice, which he followed or not at his pleasure, there existed no *deliberative legislative assembly in England;* that the parliaments of the reign of that king were temporary revolutionary conventions, arising out of, and the natural consequences of, civil wars and commotions; that their enactments were abrogated by the king after the battle of Evesham, and things returned to the *status quo ante bellum*. Edward the First, feeling

he required the assistance of his people, and that his power would be thereby strengthened, first promulgated the principle which he called the *lex justissima*,—summoned the first *legislative assembly* ever convened by legal authority in England. When his turn was served, he seemed to have forgotten the principle; or, perhaps, he only considered the emergency as one requiring and calling for extraordinary measures, and that the assembly he then called, was not to be considered as one of *periodical convoking*, but only to be adopted on pressing national calamities or dangers: it appears certain, he acted as if he considered the summoning that assembly did not abrogate or diminish his own power and royal prerogative, or as establishing any thing like a free constitutional assembly, for legislative purposes, to be summoned at regular periods; for we find him afterwards altering statutes, and enacting new laws of his own mere motion.

"His weak son and successor soon fell into the power, and under the control, of his ambitious and powerful barons, who usurped from him all the royal prerogative, as well the executive as the legislative, and nominated themselves sovereigns under the title of *lords ordainers;* and arrogated also the character of representatives of the nation, but did every thing in the king's name, as if by his authority: these proceedings produced civil wars, in which the king and the barons alternately prevailed; and in the fifteenth year of this reign, in order to settle the question of legislation, and define the royal prerogative, it was, *for the first time* enacted, *that the legislative authority should be in the king, with the advice and assent of the lords spiritual and temporal, and commons, in parliament assembled.*

"This enactment was a compromise for mutual safety between the king and the barons; the representatives of the landholders, the citizens and burgesses, were called into action, after the revolutionary

example set by Montfort, earl of Leicester, in the reign of Henry the Third: this may be considered the first successful and effectual attempt to settle a free constitutional government. The assembly was afterwards modified from time to time, until the reign of Henry the Fourth, about which time it obtained the division into two distinct houses, as it has since continued. Thus the parliament was the creature of political convulsion, and the result of a continuous struggle of near two centuries, between the kings and their barons."

Time will not allow me to do more than to refer you, for the details which support these positions, to the book itself.

Gentlemen, although parliament did not arise in any respect from feudal institutions, it was engrafted upon them. The *aula regis*, or king's high court of justice, was *called* a parliament during the reign of Henry the Third, as indeed any national assembly was called; and, after the establishment of a legislative parliament, this high court was united to it, and for some time continued its operations under the name of the high court of parliament (a term still preserved in our liturgy); and pleas, and suits of original jurisdiction were entertained, heard, and decided, with all the regularity of the legal *terms* of modern times.

From the result of what has been said, we may consider the history of England subsequent to the Conquest, as dividing itself into a period in which, though there were national councils,

there was no legislative parliament,—and into periods in which the latter divided, in different degrees, the powers of government with the crown. Of these latter periods, we must distinguish those in which the crown might dispense with parliaments as long as it could do without an aid, from those in which it was compulsory on the crown to convene parliaments at stated periods. This forms a generic distinction; because, during the former period, the security of the constitution depended on the necessities of the crown.

Having now pointed out the origin of parliaments in their *legislative* character, and indicated to you the best sources of information, I shall conclude this part of the subject in the words of Sir James Mackintosh: —

"The antiquarians of the seventeenth century," says he, "investigated the state of our ancient constitution industriously, and often learnedly, but aided by little critical estimate of authorities, and guided by no philosophical spirit. The greater number of these praiseworthy collectors, who began their labours at the period of the contest carried on in that century between the house of Stuart and the people of England, adapted their representation of our ancient laws to the part which they took in the momentous controversy of their own age. The contest was decided by the Revolution of 1688, but the mistaken opinions of the contending parties survived the determination. In two fundamental errors only did the Whig and the Tory antiquaries concur. They both held that the Saxon government was a well-ordered system, and

that the right of the people to liberty depended on the enjoyment of it by their forefathers. Both treated the terms which denote political and legal institutions, as retaining an unalterable signification through all the changes of six hundred years; and hence, both were led to believe, that the same laws and government which they saw around them during the period of their controversy, from the birth of Bacon to the death of Newton, could have existed in the time of the first Saxon freebooters. The Tories represented the Saxon kings not the less as absolute monarchs, because they acted by the advice of men of sense and weight chosen by themselves; and these writers treated all the privileges of the people as either usurpations or concessions, chiefly obtained from weak princes. The Whigs, with no less deviation from truth, endeavoured to prove that the modern constitution of King, Lords, and Commons, subsisted in the earliest times, and was then more pure and flourishing than in any succeeding age. No one, at that time was taught, by a wide survey of society, that governments are not framed after a model, but that all their parts and powers grow out of occasional acts, prompted by some urgent expediency, or some private interest, which, in the course of time, coalesce and harden into usage; and that this bundle of usages is the object of respect and the guide of conduct long before it is embodied, defined, and enforced in written laws. Government may be, in some degree, reduced to system; but it cannot flow from it. It is not like a machine or a building, which may be constructed entirely, and according to a previous plan, by the art and labour of man. It is better illustrated by comparison with vegetables, or even animals, which may be, in a very high degree, improved by skill and care, which may be grievously injured by neglect, or destroyed by violence, but which cannot be produced by human contrivance. A government can, indeed, be no more than a mere draught,

or scheme of rule, when it is not composed of habits of obedience on the part of the people, and of an habitual exercise of certain portions of authority by the individuals or bodies who constitute the sovereign power. These habits, like all others, can only be formed by repeated acts; they cannot be suddenly infused by the lawgiver, nor can they immediately follow the most perfect conviction of their propriety. Many causes having more power over the human mind than written law, it is extremely difficult, from the mere perusal of a written scheme of government, to foretell what it will prove in action. There may be governments so bad that it is justifiable to destroy them, and to trust to the probability that a better government will grow in their stead; but as the rise of a worse is also possible, so terrible a peril is never to be incurred, except in the case of a tyranny which it is impossible to reform. It may be necessary to burn a forest, containing much useful timber, but giving shelter to beasts of prey, who are formidable to an infant colony in its neighbourhood, and of too vast an extent to be gradually and safely thinned by their inadequate labour. It is fit, however, that they should be apprised, before they take an irreparable step, how little it is possible to foresee whether the earth, stripped of its vegetation, shall become an unprofitable desert or a pestilential marsh."*

* Hist. of Engl. Vol. I. p. 71.

LECTURE XIII.

GENTLEMEN,

WE have to dispose this evening of the *political,* as distinguished from the simply *legislative,* functions of parliament; and to consider the manner in which the government of this country has been divided between the legislative and the executive: the most difficult subject of the whole course; not only in itself, but because any manner of dealing with it, however temperate and impartial, must unavoidably intersect and encounter some of those innumerable shades and varieties of opinion,—some of those *states of mind,* I might perhaps rather say,—which constitute that *science of opinion,* called politics.

It appears to me, however, that if we could succeed in stripping ourselves of all predilections and prejudices, and disclothing ourselves, for a time, of all affections and antipathies, either for or towards government, or the governed,—if we could succeed in resolving ourselves into pure abstractions, and look down upon the civil affairs

of this nether world as if we were inhabitants of another planet in which political animosities were unknown, we might arrive at a few very simple postulates, which should wonderfully enable us to thread the mazes of political contrariety, and look over the constitutional history of our country with the masterful eye of a skilful physician, regarding the alternating ailments of a patient in whom contending morbific principles were at work, and referring all the fluctuating phenomena, without perplexity, to their concealed but not unknown causes.

Gentlemen, I think that one of the postulates which we should arrive at in such a state of mind would be this: —

That the two main objects which every constitution has to accomplish, and compared with which all others sink into insignificance, are, on the one hand,—

To secure to the government adequate power to conduct the civil administration of the country, consonantly to the best and most enlightened opinions *for the time being*, even though in opposition to popular prejudices, or superficial notions, prevalent at the time among the community; and, on the other hand,—

To secure to the community, viz. to the middling and lower classes, adequate protection against the natural abuse of the power given for the former purpose, whether manifesting itself in undue expenditure of the public money,

unnecessary or contumelious indifference to the public feeling or liberties, or undue subordination of the interests of those classes to the interests of the aristocracy, or other more immediate connexions of the government.

Taking this as the *ultimate* principle into which all reasonings upon governments and constitutions would resolve themselves, we might proceed to consider, that in the early stages of society, in which the element of general intelligence is wanting, and the minute subdivision of labour of every description unknown, the whole powers of government must necessarily be placed in a few hands; and that from the difficulty, in such times, of maintaining order, and successfully opposing insurrection, those powers must necessarily be large and arbitrary. We should then recollect that power, and the abuse of power, are, as human nature is constituted, almost synonymous; and we should see in this necessary *potency of the government,* the fruitful and almost certain source of much haughty domination,—of much cruel oppression,—and of much indulged and pampered despotism. We should then recollect that habits thus established would travel, as it were, prescriptively, down the stream of time; while they would be encountering, at every stage, an *advancing* condition of civilization; accompanied with its concomitants—increasing intelligence, increasing desire for political

freedom, and, probably, increasing aptitude for its enjoyment;—that thus a growing and long-enduring struggle would *necessarily* be engendered between a condition of power still remaining absolutely necessary for many purposes of public good, but abused, and dealt with rather as the private right of the possessor, than as a public trust;—and often strengthened, in its consciousness of its own value and necessity, by experience of the still greater outrages and iniquities of the governed, when breaking loose from the bonds of rule. Thus, during all these periods of imperfect civilization, there would be two antagonizing principles constantly at work, and arraying the community into two opposed classes—the governed multitude, exasperated at oppression, writhing under coercion, and disaffected to power itself (the most indispensable of all things) from continual familiarity with its abuse; and the governing few, and those whose interests were riveted to theirs, contemplating the community, with perhaps too much truth, as dangerous animals, only to be safely dwelt among by means of chains and fences, savage keepers, and hard blows.

In all this we should see *unavoidable* and *irremediable* elements of antipathy, exaggerated perceptions, and unphilosophized opinions; and we should see that some intermediate machinery, —some participation by the community itself in the functions of power, some enjoyment of

its advantages, and some correlative restraint over the governed,—was the only possible mode of escaping from those shocks and conflicts which must otherwise thicken upon the two opposing elements of society, until either despotism had been established in all its vigour, or the state itself had fallen to pieces amid the collisions. In this necessity, we should see the gradual development and enlargement of the functions of the legislature; and in those functions we should probably see the best, if not the only means, which human institutions (necessarily imperfect) could provide for restraining the evils of misrule, and inoculating the administration of government with a due regard for the interests of the governed.

But here we should also see a beginning of new difficulties. *Quo meliores, eo deteriores,* as the schoolmen have it. By so far as they had crippled the hand of power for committing iniquities, and executing oppression, by so far also had they crippled it for carrying on effectually the operative government of the country, even when it should seek, with the greatest integrity, the wise and faithful discharge of its trust. In addition to the natural difficulties which government had to contend with,—the preservation of order, the adjustment of contending interests, the satisfaction of hungry and craving courtiers,—it would now have to encounter all the uncertainties of multifarious

opinion, all the machinations of organized political faction, all the busy interference, sometimes wise and sometimes unwise, of conscious control. There would be lords many, and rulers many, and only one kingdom to be ruled between them. There would be parliaments conscious of their power, and throwing obstacles in the way of every legitimate, and perhaps needful, act of the government. If any man wants to know, practically, what this sort of thing is, let him take up the management of some public institution or society, in which the *general* body, or proprietary, enter largely into the administration; and let him learn the lesson of sickening vexation, of hopeless effort, of crippled action, and of thankless exertion. Let him see every plan and system which he adopts paralyzed and thwarted by the half-informed and the plausible mover of factious resolutions;—let him have to act, and be *compelled* to act, without any security that his proceedings shall not be overruled and reprimanded;—let him wear out his health in the business of his office, with the probability of being dismissed and disgraced by the working of some powerful faction, as the termination of his labours;—let him take some lessons in such a school of experience; and I am much mistaken if he will not soon begin to have a keen perception of the desirableness of securing even a packed majority; and have a lively sensibility

to the sickened, exasperated complaint made by the ministers of William the Third, (as I mentioned to you in a former Lecture,) when the country was trembling on the very brink of perdition—" that no man knew one day what the House of Commons would do the next."

Gentlemen, it is in the nature of all practical evils, slowly, and sometimes imperceptibly, to work out their own remedy. The means may be bad, the remedy may be pernicious,—as in therapeutics most of our remedies are themselves poisons. Thus, political poison, namely, the prostitution of crown influence to the corruption of the House of Commons, has been made, at one and the same time, the means of neutralizing that most important check intended to be exercised by it upon the profligate expenditure of the public money,—and also the means of saving the country from that destruction to which she must long since have been submitted, had the indescribably delicate and difficult operations of the scientific portions of government, had the questions of corn laws and currency, of colonial interests, and manufacturing interests, of foreign commerce, and of internal administration,—been left to be voted up and down by fluctuating majorities.

Gentlemen, *this* is the price which we have paid for salvation from this destruction,—*this* is the poison which has been administered to our constitution to save it from being torne to

pieces by the intestine war of conflicting interests;—each preferring its own advantage, and the advantage of the moment, to the general good, and the future security;—none having virtue or wisdom enough of themselves to make a liberal and noble sacrifice of partial and inferior interests to the general good;—the only principle upon which the government of a great country of multifarious interests ever can be, ever will be, successfully conducted.

To effect *this* salvation, the whole constitution of this country has within the last 150 years been *utterly transmuted;*—but its forms having in many respects been rigidly observed, this revolution has gone on silently and insensibly before the eyes of chroniclers, and Vinerian professors, and writers on the Constitution, who are carried away by the sound of words without regarding the efficacy of things; and who would have you believe, when the very elements of the original Constitution have been lost and exhaled away, that that Constitution still exists, and that the deviations from it are casual corruptions only.

Gentlemen, if we could keep steadily in mind this philosophy of our constitutional history, we should be able to read it with a vast accession of understanding; since, instead of looking at its successive incidents as isolated facts, and talking, as women and children do, of the personal merits and demerits merely of the actors in them, we should be able to resolve them all into simply the

workings and alternate ascendancies of those conflicting principles which we have described ;—and we should see, in all the existing varieties of political opinion, merely the preponderating perception in men's minds, according to their points of view and habits of observation, of the one or the other of the principles of evil which are contained in our Constitution.

Those whose habits of life and habits of reading make them conversant principally with the overt or secret acts of political corruption,—those whose attention is mainly drawn to the failure of the legislature, as now constituted, to secure the public against pension-lists and sinecures,—those who look only at what they have been *taught* to consider as the theory of the Constitution, and contemplate the practical departures from it as so many frauds upon it,—and those who have tutored themselves to believe that public opinion, as it is called, or, as some one has well defined it, "an opinion formed without the evidence," is as capable of directing the complicated affairs of this vast empire, as the highest grades of individual talent, and the most profound information, —all such persons array themselves boldly, fearlessly, and honestly, on the side of popular politics, and form that dense mass which, while the vessel of the state is lying gunwale to, and creaking and cracking in every spar, under such an administration as some of us recollect, by throwing their whole weight on the weather-bulwarks

and gangways, prevent her from going fairly over on her lee-beams into the abyss of virtual despotism under the forms of a free government, —but who, when she has suddenly righted, and got a *weather* lurch, do, by retaining their position, without adverting to the change of danger, threaten her with a peril equally imminent, that of pitching and going down.

Those, on the other hand, whose position in life, actual experience, or habits of thought and reading, have led them principally to preponderate the mischiefs of unsettled government and factious intrigue,—those who know what it is to throw open the gates of political ambition to every party in the nation, and to leave the administration with its whole time engrossed in parrying and countermining their intrigues, instead of dedicating itself steadily and securely to the real business of the country,—those who have learnt, by observation, that a pure government of public opinion is the worst of all governments, because it is this to-day and that to-morrow, — those who know privately (as I happen to do) what is now going on in America at this very time, in spite of all her appearance of prosperity, and that Congress is fast verging to a state which their own wisest publicists, when they dare to speak out, predict as the inevitable destruction of that prosperity,—those whose attention has been fixed principally upon the miseries of mob rule, and popular

commotion, and who have been led to consider the great body of the people, as they are but too apt to exhibit themselves, as disaffected, unreasonable, and, when once let loose, unrestrainable,—lastly, those who have been brought up with high religious feelings of the duty of submission and respect to established authorities, but who are, perhaps, but too apt to forget that the authorities now established would not have been where they are, but for political change and revolution, and who, consequently, carry their *sole* argument too far;—these, Gentlemen, array themselves, equally honestly, upon the side of power and stability in the government.

It may be said that there are many others who array themselves on that side, merely that they may share in the advantages of corruption. I admit it. But if I have not specified these in my enumeration, neither have I specified those who array themselves on the side of liberty, in order that they may take the advantage of licentious insubordination, or the chances of revolutionary change and confusion.

Gentlemen, I set out by saying, that there are two main objects for every constitution to seek to accomplish:—

To secure to the government adequate power to conduct the civil administration of the country, firmly and scientifically, without being crippled by ignorant interference, or oscillated by popular inconstancy;—and to secure to the community

adequate protection against the natural abuse of the power given for this purpose.

There appear to be two diverse modes of accomplishing this; both of which have been tried in this country, and neither of which have been completely successful:—

First, the separation of the functions of the government into those which are to be under the direct control of the legislature—such as taxation, and the making of laws,—and those which are to be *free* from that direct control.

And, *Secondly*, the subjecting *all* the functions of the government to the direct control of the legislature, but felicitously balancing the democratic and aristocratic principles of the Constitution, so as to keep the scales in equipoise; or, rather, to give a preponderance to the aristocratic scale, *with the government in it;* but not such a preponderance but that, if it descends too far, and strikes, it shall immediately rebound, and the other scale descend.

The first was the principle of the Constitution during the whole time it was carried on mainly by force of the prerogative; namely, down to the Revolution. Its striking evil is its continual liability to involve the country in civil war, from the direct collisions which it produces between the crown and the legislature: the ministers, acting upon their *responsibility*,—acting in the dark, in the conclaves of the Court and the Privy Council,—acting, perhaps, against the

sense of the nation, till things proceed so far that a parliamentary impeachment is the consequence; and if the king have violently and personally abetted them, a forcible dispossession of the throne. Our whole history, anterior to the Revolution, is a varying succession of some such events; suspended only at times by an usurpation of the functions of the executive government by the parliament itself, or by the reigns of powerful and despotic monarchs who had art or talent enough to set the parliament at defiance. *Their* reigns, though commonly prosperous and proud, were also reigns of too much individual oppression, and despotic temperament, to be commended or desired; whatever may be said about "golden days."

Under the other system of government,—that which has grown up subsequent to the Revolution,—the great difficulty is that of keeping the balance true for any great length of time. Every one knows by observation, how extremely difficult it is, even in a private family, to preserve an even balance of dominion between two individuals; and how almost invariably one or the other will acquire the ascendency, particularly when, instead of having separate functions, they set out upon the principle of mutual participation. There can be little doubt that there have been periods when the balance or equipoise of the aristocratical and democratic elements has been very nearly obtained; as well as periods of great departure

from it,—and *that* not so much by variations in the action of the representative system, as by variations in the relative power of the government. During the reign of William the Third, the Crown was scarcely able to carry on the government. On the other hand, during the greater part of the last century, the influence of the Crown, or what is so called, was so enormously increased by the collection and distribution of so immense a revenue, that the balance was almost entirely lost; and an insensible habitude was begotten in the government, of contumelious opposition to the great mass of the community, of which it was the oversight of the statesmen of those days, not to see the inevitable reaction, as soon as the relative position of the Government should be weakened or changed by the return to a peace establishment, embarrassed by an enormous pressure of public debt. That reaction has long since arrived; and it has been strengthened by the increasing power of the public press,—and, more recently, by the state of affairs on the Continent; and the power of Government having at the same time been reduced, by an immense diminution of patronage in the army and navy, and even in civil offices, the relative change in the position of the two elements of the Constitution has been proceeding in a compound ratio. Those who are acquainted with the power of compound ratios will find no cause of surprise in

the very extraordinary change in the aspect of public affairs which the last few years have produced, and the admitted ascendency, at the present day, of the democratic element of the Constitution.

Gentlemen, I stated to you that down to the period of the Revolution at least, the government of this country was mainly carried on by force of the prerogative; namely, upon the actual discretion and responsibility of ministers, out of parliament; and not as now, with the concurrence, at every step, and previous participation, of the legislature.

You will consequently find that, during those periods, the corruption which was employed to create a dependency of the two houses of parliament on the Crown, had for its principal object the facilitating the granting of the supplies; the correspondence between supply and redress being for some centuries the balance-spring of the Constitution; the object of the Crown, therefore, in packing the House of Commons, being to obtain the *maximum* of supply with the *minimum* of redress.

It is true that parliament, from the earliest periods, frequently interfered with the royal expenditure,—a right which was, I suppose, inferred upon the rule, *Cujus est dare, ejus est disponere.* But when Edward the Third consulted his parliament upon the expediency of negotiations for peace, as I mentioned to you in a former Lecture,

the Commons had not acquired boldness enough to tender their advice.

" In Richard the Second's reign, they answered to a similar proposition, with a little more confidence, that the dangers each way were so considerable they dared not decide, though an honourable peace would be the greatest comfort they could have; and concluded by hoping, that the king would not engage to do homage for Calais, or the conquered country. The parliament of the tenth of his reign was expressly summoned, in order to advise concerning the king's intended expedition beyond sea; a great council, which had previously been assembled at Oxford, having declared their incompetence to consent to this measure without the advice of parliament. Yet a few years afterwards, on a similar reference, the Commons rather declined to give any opinion. They confirmed the league of Henry the Fifth with the Emperor Sigismund. And the treaty of Troyes, which was so fundamentally to change the situation of Henry and his successors, obtained, as it evidently required, the sanction of both houses of parliament. These precedents, conspiring with the weakness of the executive government, in the minority of Henry the Sixth, to fling an increase of influence into the scale of the Commons, they made their concurrence necessary to all important state proceedings, both of a foreign and domestic nature. Thus, commissioners were appointed to treat of the deliverance of the king of Scots; the duchesses of Bedford and Gloucester were made denizens; and mediators were appointed to reconcile the dukes of Gloucester and Burgundy, by authority of the three estates assembled in parliament. Leave was given to the dukes of Bedford and Gloucester, and others in the king's behalf, to treat of peace with France, by both houses of parliament, in pursuance of an article in the treaty of Troyes, that no treaty should be set on foot with the dauphin, without consent of the three

estates of both realms. This article was afterwards repealed."*

This energy of parliament was quelled by the civil wars of the fifteenth century; and, whatever may have passed in debates within its walls that have not been preserved, did not often display itself in any overt act under the Tudors. In general, there was perhaps little effective restraint upon the government, except in the two articles of levying money and enacting laws. To grant subsidies which could not be raised by any other course, to propose statutes which were not binding without their consent, to consider of public grievances, and procure their redress either by law or petition to the crown, were their acknowledged constitutional privileges. For this end, liberty of speech, and free access to the royal person, were claimed by the Speaker as customary privileges (though not quite, in his modern language, as undoubted rights) at the commencement of every parliament. But the House of Commons in Elizabeth's reign contained men of a bold and steady patriotism, well read in the laws and records of old times, sensible to the dangers of their country, and abuses of government, and conscious that it was their privilege and their duty to watch over the common weal. This led to several conflicts between the crown and parliament; wherein, if the former often asserted the victory, the latter sometimes kept

* Hallam's Middle Ages, Vol. III. p. 144.

the field, and was left on the whole a gainer at the close of the campaign.

Of the vast difference, however, between the political power of the House of Commons at this period and that now enjoyed by it, we may form some idea from the language continually addressed to it by the queen. At the parliament which met in April, 1571, the Lord-keeper Bacon, in answer to the Speaker's customary request for freedom of speech in the Commons, said that "her Majesty, having experience of late of some disorder, and certain offences, which though they were not punished, yet were they offences still, and so must be accounted, they would, therefore, do well to meddle with *no matters of state, but such as should be propounded t them;* and to occupy themselves in other matters concerning the commonwealth."

"This very session, however, was remarkable for the first marked complaints against some notorious abuses, which defaced the civil government of Elizabeth. A member having rather prematurely suggested the offer of a subsidy, several complaints were made of irregular and oppressive practices, and Mr. Bell [a member] said, that licenses granted by the crown, and other abuses, galled the people; intimating also, that the subsidy should be accompanied by a redress of grievances. This occasion of introducing the subject, though strictly constitutional, was likely to cause displeasure. The Speaker informed them, a few days after, of a message from the queen *to spend little time in motions, and make no long speeches.* And Bell, it appears, having been sent for by the Council, came into the house "with such an amazed countenance,

that it daunted all the rest," who for many days durst not enter on any matter of importance. It became the common whisper, that no one must speak against licenses, lest the queen and council should be angry. And at the close of the session, the lord-keeper severely reprimanded those audacious, arrogant, and presumptuous members, who had called her Majesty's grants and prerogatives in question, meddling with matters neither pertaining to them, nor within the capacity of their understanding."*

The long contest between the crown and parliament, under the two first princes of the Stuart family, forms a very interesting part of the English history; and its origin and consequences deserve the most attentive examination. The object in dispute was no less than to determine and establish the political constitution of a great nation; but, as in all other cases in which two parties come to extremities, each was alternately the aggressor, — each violated that constitution to which each appealed. It would be useless, therefore, to bring forward the facts of such a period to illustrate the actual *status* of the constitution.

Again, the restoration of Charles the Second to the throne of his ancestors, was produced in such hurry and agitation of spirits, as precluded every attention and precaution which prudence and deliberation would have suggested. The different parties who united in this precipitate measure, were too heterogeneous in their

* Hallam's Const. Hist. Vol. I. p. 345.

principles, and too jealous of one another, as well as too much afraid of the partizans of the protectorate, or the supporters of a republican system, to form any regular concert, and thus to hazard the delay which an attempt to limit the powers and to regulate the conduct of the sovereign, would have required. Having no leisure for entering into particulars, they were satisfied with the professions of Charles, conceived in vague and general terms; that, in matters of religion, he would shew indulgence to differences of opinion; that he would grant a free pardon to all offences committed against him by his subjects, reserving to the consideration of parliament the exceptions that ought to be made; and that, in relation to the changes lately introduced in the state of property, he would refer all future claims to that assembly. None of those political points, therefore, which, after the accession of James the First, had been the subject of controversy, were, on this occasion, settled or explained; and the monarch, assuming the reins of government without any limitations or conditions, was understood to recover all that extent of prerogative which, before the commencement of the civil war, had been vested in the crown.*

Gentlemen, down to this time, (with the exception of the period of the Commonwealth, and some other short intervals,) the government

* Hallam.

of this country had been carried on under the *first* of the two systems that I propounded to you, namely, the separation of the functions of government into those which are to be under the direct control of the legislature, (namely, taxation and the making of laws,) and those which are to be free from that *direct* control, and subject only to *retrospective* interference under the name of complaint of grievances.

It was in the long parliament of Charles the Second, that the incompatibility of this system with the permanent existence of a representative assembly, was most forcibly manifested, because under circumstances apparently most advantageous to that system. Among the ardent loyalists, who formed the bulk of that parliament, a certain number of a different class had been returned, not sufficient of themselves to constitute a very effective minority, but of considerable importance as a nucleus round which the lesser factions that circumstances should produce might be gathered. Long sessions, and a long continuance of the same parliament, have an inevitable tendency to generate a systematic opposition to the measures of the crown, which it requires all vigilance and management to hinder from becoming too powerful. The sense of personal importance, the desire of occupation in business, (a very characteristic propensity of the English gentry,) the various inducements of private passion and interest,

bring forward so many active spirits, that it was, even in that age, as reasonable to expect that the ocean should always be tranquil, as that a House of Commons should continue long to do the king's bidding with any kind of unanimity or submission.

No parliament has ever been elected in circumstances so favourable for the crown; none ever brought with it such high notions of prerogative: yet in this assembly a party soon grew up, and gained strength in every successive year, which the king could neither direct nor subdue. The methods of bribery to which the court had largely recourse, though they certainly diverted some of the measures, and destroyed the character of this opposition, proved, in the end, like those dangerous medicines which palliate the instant symptoms of a disease that they aggravate. The leaders of this parliament were, in general, very corrupt men; but they knew better than to quit the power which made them worth purchase. Thus the House of Commons matured and extended those rights of inquiring into and controlling the management of public affairs, which had caused so much dispute in former times: and, as the exercise of these functions became more habitual, and passed with little or no open resistance from the crown, the people learned to reckon them unquestionable, or even fundamental; and were prepared for that more perfect settlement of the consti-

tution on a more republican basis, which took place after the Revolution. The reign of Charles the Second, though displaying some stretches of arbitrary power, and threatening a great deal more, was, in fact, the transitional state between the ancient and modern schemes of the English constitution; between that course of government where the executive power was very little bounded except by the laws, and that where it can only be carried on, even within its own province, by the consent and co-operation, in a great measure, of the parliament.*

Gentlemen, the system of *appropriating* the supplies, which I have already mentioned to you, was first permanently established in this parliament of Charles theSecond. Clarendon inveighed with fury against this, as an invention derogatory to the honour of the crown; but the king himself, having listened to some who persuaded him that the money would be advanced more easily upon these terms, insisted that the subsidy bill with this proviso should not be thrown out. The same clause was repeated next year, and has become regular. That supplies granted by parliament are only to be expended for particular objects specified by itself, became from this time an undisputed principle, recognized by frequent, and, at length, constant practice. It drew with it the necessity of estimates regularly laid before the House of Commons;

* Hallam.

and, by exposing the management of the public revenues, has given to parliament not only a real and effective control over that branch of the executive administration, but an actual participation in it.

By these, and other means, since the Restoration, and more especially since the Revolution, an immense power has been thrown into the scale of both houses of parliament, (though practically in more frequent exercise by the lower,) in consequence of their annual session during several months in every year, and their almost unlimited rights of investigation, discussion, and advice. We have thereby arrived at the other, or remaining diathesis of the constitution, which I pointed out to you; namely, the subjecting *all* the functions of government to the *direct* control of the legislature; and by the exercise of crown influence, as it is called, we have arrived at the correlative term of that diathesis, namely, the balancing of the democratic and aristocratic elements of the constitution, so as to keep the scales in somewhat like equipoise *in the legislature itself.*

Gentlemen, you will find the particulars of the influence of the crown very well stated in Lord John Russell's *View of the English Constitution,* p. 401, under the different heads of "The collection of the revenue—the civil list, and the subordinate offices of civil government—the colonies—the army, navy, ordnance, &c.—

the law — the church — and the influence of honours." I regret that time will not allow of my reading to you the whole statement.

Gentlemen, I have stated to you very fully, in a former Lecture, what the practical system of government is which has developed itself under this second diathesis,—this "reign," as it is called in the *Edinburgh Review*, "of influence and regular freedom."

I stated it to you also, in my first Lecture, to be the formation of a constitution within a constitution; the commixture, contribution, or combination, of the three elements of the constitution in the Commons House of Parliament, as the arena of government, each being represented there, with different degrees of preponderance, as time and circumstances have brought to pass.

Gentlemen, I have shewn you that this view of the constitution does not originate with myself, in any love of putting forth novelties,— by shewing you that it is the same view of the constitution which thirteen years ago was powerfully propounded by the *Edinburgh Review*, the organ of the Whigs. I shall now proceed to show you that it is, also, the doctrine of Lord Erskine, by a short extract from his *Armata*:—

"The principle of balance has been long *departed* from, and reciprocal jealousies between your crown and your commons have been laid asleep; prerogative (depending wholly upon influence) has exerted itself

in nothing; and the whole executive government has been, *with its own consent*, carried on in your popular council. *This* has bestowed upon it an entirely *new* character: and, from the operation of other causes, its powers have no *actual* limitation, though theory defines and limits them. How far, therefore, *under such circumstances*, it might be safe entirely to recast this great assembly, and to disturb a system which, without any new organization, has in a manner created a new constitution, it is not for a stranger to pronounce." *

How or why it is that these important facts of our constitution have been so *faintly* put forth in the recent discussions, it is no business of mine to inquire. It may, perhaps, be resolved by the singular truth which I stated to you in a recent Lecture, that there is no part of philosophy so difficult, or so little cultivated, as the philosophy of that which is daily under our eyes. The science of politics has, however, not yet been raised to the rank of what the French philosophers call "les sciences d'observation."

Gentlemen,—"What our constitution *is*, we may know if we so choose; it is before our eyes: what it may *become* is unknown: it depends, like our lives, on contingencies; it is buried, like our hopes and our fears, in the dark womb of futurity. Philosophers and politicians have speculated on the pleasing, awful subject; some concluding that the democratic part of our constitution will bring on a republic; others that the monarchical will bring on despotism."† Of the

* Armata, Part I. p. 67.

† Dyer's Letters on the English Constitution, p. 121.

latter alternative, there is, at present at least, no appearance. We are about, it seems, to make the experiment of a *partial* return, or *approximation*, to that diathesis of the Constitution which our history presents prior to the Revolution, namely, that of *separate* and *independent* estates of the realm;—each being that which it nominally professes to be; each being the independent organ of that element of the Constitution which denominates it.

Now, Gentlemen, we are not here to "talk politics," or to pronounce opinions upon one class of men, or another class of men; but as a *scientific* constitutionalist, (as opposed to a politician,) I have one quarrel with the present government upon scientific grounds, which I will fairly state to you. It is that they have never stated to the scientific part of the community how far they intend the return to the original constitution of the country to be followed out in the correlative parts. If the House of Commons should two years hence, or ten years hence, pass an act for the extinction of the national debt, or the appropriation of church property to its redemption, do they intend that the *House of Lords*, or the *Crown*, should oppose the check of the Constitution as it is called? Do they intend that a creation of peers should then take place to throw out that bill in the *House of Lords*, or do they intend that the King shall reply "Le Roy s'avisera?" Again, do they intend that the House of Commons shall

thereupon *stop the supplies*,—and, as a consequence, put an end to the army and navy,—dissolve the Constitution, and transfer the country into a province of France? If this is what is intended, namely, a return to the system of mutual checks, I can perfectly understand it,—but if this is *not* intended, I confess, as a man of science, I should have been better pleased to have known what *is* intended to be substituted for the principle of mutual checks; a principle which is no longer applicable to the circumstances of the country.

I shall say no more on this subject; but shall conclude this lecture with a few observations upon topics connected with constitutional learning, which do not appear to have been sufficiently considered.

Gentlemen, you will read, in Blackstone, the following passage:—

"In all tyrannical governments, the supreme magistracy, or the right both of *making* and of *enforcing* the laws, is vested in one and the same man, or one and the same body of men; and wherever these two powers are united together, there can be no public liberty. The magistrate may enact tyrannical laws, and execute them in a tyrannical manner, since he is possessed, in quality of dispenser of justice, with all the power which he, as legislator, thinks proper to give himself. But where the legislative and executive authority are in distinct hands, the former will take care not to entrust the latter with so large a power as may tend to the subversion of its own independence,

and therewith of the liberty of the subject." (1 Bl. Com. 146.)

Nothing is so easy as to lay down gratuitous propositions of this kind, as absolute truths, giving them an *air* of argumentative demonstration, and subjecting them to no real scientific scrutiny; and thus they are repeated, from hand to hand, till they acquire the authority of axioms or principles. "*Wherever* the two powers of making and of enforcing the laws (says Blackstone) are vested in one and the same man, or one and the same body of men, there can be no public liberty." Now this, so far from being an *absolute*, is merely a *conditional*, truth. Supposing the power of making laws to be an *irresponsible* and an *unrestricted* power, or even approaching to it, then certainly the union with it of the executive power would give a greater temptation to the natural tendency to abuse the legislative power, by conferring a greater arbitrariness and wilfulness in the *application and use* of the laws so made, and removing all doubt of their willing and efficient execution, however unrighteous they might be. But where both the law-making and the law-executing power are, by constitutional machinery, placed under restriction, and under responsibility, and the tendency to the abuse of the power is *effectually* countervailed, there the distribution or union of powers and functions must be a matter of discretion, to be

governed by considerations of expediency and efficiency; and if the union of those powers, in the whole, or in part, be found to give any increased advantages to the wholesome action of the state machine, it would be absurd to deny that advantage out of servile obedience to an unproved and ill-considered dogma.

Gentlemen, is it possible to give an ontological definition of *legislative* function? To put this to the test we must make this inquiry. Suppose the whole power of law-making, and of ruling, to be vested in one individual, and not distributed among different estates of the realm, can we still distinguish between acts or functions which are legislative, and acts or functions which are governmental, or politic only? Because I apprehend that if functions have no ontological distinction when united in one person, or body politic, their separation and distribution between two or more such, constitutes an accidental, and not an ontological, distinction between them. Now, if we take the matter in this position, and thus strip it of all adventitious or conventional elements, we must, I think, admit that, to give any ontological meaning to the term *legislative*, we must confine it to those acts and proceedings of the sovereign power which either directly or indirectly, either *in rem* or *in personam*, constitute a rule, or create an obligation, binding on any class or number of the governed community. Thus the making

of a tax is legislative, because it imposes the obligation of payment; but the disposal of the produce is governmental or administrative, because it only indirectly, and by its consequences, affects the community.

Now, as in the regal acts of former times we shall find an intermixture of the strictly legislative with the strictly governmental or administrative function, so, in the legislational acts of modern times we shall find an intermixture of the strictly administrative with the strictly legislative. Thus, the militia laws, so far as they compel any number of men to adopt the military character, or submit to a pecuniary mulct, are strictly legislative; while so far as they regulate the pay, the clothing, and the training of the men, they are strictly administrative; — they do that for the government which, in former times, the government would have done for itself. The like will be found true of all acts relative to the customs, the excise, the army and navy, and the various government departments. The main outlines are taken out of the hands of government by the legislation, leaving the details only to be filled up by the actual *employés* of the government.

The practical connexion between the legislative and the *executive* department *(properly* so called) seems as unavoidable as that between the legislative and the administrative. In a

constitutional monarchy, the army, the navy, the ordnance, the customs, the excise, the dock-yards, the victualling-office, the transport-office, the mint,—cannot exist without the aid of legislation. There must be laws for the ordering of them;—there must be legislative sanctions for the punishment of offences committed against, or in them:—there must be authorities given to officers and commissioners to establish regulations, and to enforce them when made. How shall we ever separate the legislative details from the practical details? Who but those experienced in the practical details, can suggest and determine the legislative details? Who but barrack-masters know what is wanting to carry on the business of barracks? Who but commissioners and comptrollers of customs know the whole system of the custom-house? Who but themselves can find them in legislation? Can *you*, or *I?* Let me ask, who but lawyers could legislate for lawyers? What then is the real meaning of this anxiety to separate the functions of the executive and the legislative,—to separate information from action,—to exclude experience from management? Is it not another mode of expressing our ignorance and neglect of the true science of government—of political economy, properly so called;—for how "political economy" has come to be seized on as the designation for the science of wealth and population, I never could conceive; an observation,

which I make with all due deference to the learned and talented professor who occupies *that* department in this college, and certainly not intending to assert, that I and not he am the professor of Political Economy. Is not what we really mean, when we say separation, (if we knew our meaning)—not separation, but *union,* with efficient *control?* Is not what we mean, or ought to mean, *this;* that those who understand a subject should legislate upon it; but that care should be taken that they do it under proper restraint and sense of restraint; and that, having it in a manner to themselves, they should not infect that legislation with any mischievous, or arbitrary, or unwise principle; with any undue violence upon the subject, or injustice in the law. Now, if this is what we *do* mean, I say that participation in legislation,—that the right of proposing and regulating legislation, — *under control,* — is a totally different thing from separation and exclusion from legislation: and I say, that we never shall arrive at the true science of government, while we continue to deal in dogmas, which do not even represent our own meaning, but which *do* represent a great deal of mischievous fallacy.

Gentlemen, one of the principles put forward as a postulate by most political writers on the popular side is, that "man is naturally free and naturally equal." The American declaration of independence sets out with asserting, that

"man is *naturally* free, equal, and destined to be happy." +

The sentiment is grateful in its sound to every generous mind, but we must not sacrifice truth even to generous feelings. If the word *naturally* has any real meaning, no foundation principle ever was laid deeper in falsehood. What human beings might be, in a mere *abstract* or metaphysical state of existence, it is not for us to know. A potential or possible A, may probably be equal to a potential or possible B; but to say that, *therefore*, men, meaning individual, personalized men, such men as constitute a community, are naturally equal, is only to use the worst fallacy of argument,—that of making the same word signify two totally different objects of the mind. If by men, *naturally*, is meant, as it must be to have any relevancy, men anterior to, or independent of civil institutions, laws, and organized government, then, so far from its being true that such men are equal, it may be fearlessly stated that scarcely two men could be found who, left to themselves, would not in a short time resolve this perfect equality into gross inequality. In the first place, physical strength is *naturally* a source of the greatest inequality in the power of acquisition, the power of possession, and the power of enjoyment. Among the lawless classes of society, we see brute strength assume the most odious and daring domination over the weaker who are

+ Not so — Mary says, "Not all men are created equal." Not "they are endowed by their creator with certain unalienable rights" Not "among these are life Liberty & the pursuit of happiness!" How could such a man misquote & misunderstand?

brought into competition with its will or desires. In the next place, craft, acuteness, and ingenuity, parried by no social rule, create a fearful disparity in dealing with dulness, simplicity, and uninventiveness. It is impossible to realize in language, with adequate force, the universality and the extent of natural disparity. And if I were asked, what is the real cause of men's originally creating civil institutions, and establishing a machinery of rule, I should answer, it is precisely because they are *naturally* so unequal, that the inequality cannot be borne;—that the oppressed and injured find it better to part with a portion of their liberty as the price of protection, than to resign it all to their *un*-equal and dominant associates. If, then, there be any truth in things, governments, instead of being invasions of natural equality, are machines invented for the express purpose of bringing about a greater degree of equality than can possibly subsist in a natural state: and it can perhaps be scarcely asserted of any government, however infamous, that it produced a greater degree of violation of those universal desires of life and enjoyment, which constitute the only properties in which men are nearly equal, than would have been perpetrated in a state of nature without government.

I have said that the universal desires of life and enjoyment constitute the only properties in which men are really equal: and here, per-

haps, we shall discover the root of the error. From the equality and universality of desire is probably assumed an equality and universality of right: since it cannot be shown, in the abstract, why, of a thing equally desired, equally necessary, to each, one should enjoy, and the other should be denied the enjoyment; but so far from looking for the principles of civil institutions in *natural* equality, I should say that governments are more or less perfect, mainly in proportion as they succeed in extinguishing natural *inequality;* in putting an end to the mastery of force, the mastery of fraud, and the mastery of daring and irresponsible wickedness, and in doing all this with the smallest possible amount of *substituted* violence: in a word, I should give as my definition of a good government, the same as that which was given long ago by Philip de Comines, when he said, the best government is that in which the interests of the people are best attended to, and the least violence is done to the subjects.

It may be said, that the objection I have taken to this axiom is more accurate than material. That I deny.—If it be received as true that men are *naturally* equal, then the vast inequality which we now see in them must be the creation of civil institutions; and it would be a consequence that some would draw, and might fairly draw, that the destruction of

those institutions is essential to a return to natural equality. It may, indeed, have been observed, that equality has been often used as a watchword by those whose daring and violent dispositions made them most desirous of exercising that natural *inequality* which is let loose, for a time, by the dissolution of political institutions. Those who meant *license* said *liberty*, and those who meant *force* and *violence*, said *equality;* and their words availed them. This is, of itself, sufficient to shew the mischievousness of false axioms.

It is true that the inequality of *wealth* is greatly increased by civil institutions, but why is it so? Because wealth is as it were *created* by them. Without these institutions, productive capital has no existence; and if one man has a few more commodities or implements than another, it is probably because he has possessed himself by force or fraud of those of some one else. I am far from intending to say that an *extreme* inequality in the distribution of wealth is not a great political evil. I think it is the great evil belonging to this age and this country,—and that the introduction of some successful countervailing principle, if it were possible, (which I neither intend to assert or deny), would be the greatest boon which could be conferred upon us. This evil is, however, the effect of causes arising from the very nature of capital, and the existing mode of its application; and I fear we have to wait for

some other remedy than the co-operative system, before the evil can be arrested.

The mischief, however, of taking *inverted* principles as axioms of political science is, that they generate expectations of an amount of perfection in the results of political institutions, which it is perhaps impossible they should ever reach; and, as in the present instance, tend to confound evils originating in the nature of things, with those actually begotten by existing institutions; which will probably be numerous enough of themselves, without multiplying them by fallacies. It is always important to enable mankind to form a fair appreciation of what they really owe to civil institutions; the great difficulty of forming them successfully; and the governing fact that every system has its own peculiar evils, as well as its own advantages, and that it is often the most difficult thing in the world to cast up the balances of each, and determine which has the advantage.

Here, Gentlemen, and, perhaps, you will say not too soon, I must terminate the present course. In what I have offered to you I have consulted no man's pleasure,—I have performed no man's bidding. By Whigs I have been called Tory,—by Tories I have been called Whig;—perhaps the best proof that I am independent of either. Like an honest man, I have perhaps offended both parties. But, for myself, I may say in the language of the blind poet of Eden,

"I have taken for the solace of a good old age, should God vouchsafe it to me, the honest liberty of a free speech from my youth." Whatever I may have said that is unpalatable to the humour of the day, I have said it from no disaffection to the cause of honest and manly freedom; and should a Castlereagh administration ever return upon this country, and the professors of this College be expected to give their support to a despotic temperament in the government, I should resign my office with as much disdain as I accepted it with pride and gratification.

ADDENDA.

P. 10, "And we should then recollect that no such power had ever been exercised for 140 years, namely, since the bill for triennial parliaments."

I have since observed, that the royal veto was once exercised in the reign of Queen Anne; but I cannot now remember upon what occasion.

P. 11, "We shall be told that the king, as a branch of the legislature, can know nothing of any resolution of parliament, till it has passed both houses of the legislature; * * * * * and yet we shall hear the first minister of the crown broadly admitting that the pre-assent of the king is implied to a bill brought in by his own confidential servants."

Among many other instances, the writer might refer to a declaration of Lord Grey's, at the commencement of the debates on the Reform bill. The following extract is also in point:

"What did the noble duke [Wellington] say on the Catholic question? He said that he was debarred from exercising his own opinion on the question, for he considered his opinion ought to give way before a measure which was brought forward by the king's

ministers, *with the sanction of the crown.* The noble duke's declaration did him honour; and he recollected it was said, that the noble duke made answer to Lord Castlereagh's demand, whether he would take part in the Catholic bill, that he would not take any step until the ministers of the crown brought it forward *with the king's authority.*"—Marquis of Lansdowne, in the debate on the Reform bill, Oct. 5, 1831.

To this might be added the instances of the king proroguing parliament by proclamation, to the very intent and purpose, that a bill negatived in one house, may be reintroduced, by making, nominally, a new session; as in 1689, 1707, and very recently:—all proofs, no doubt, "that the king can know nothing of any resolution of parliament, till it has passed *both* houses of parliament."

P. 38, "in which the most delicate and difficult questions of political science are left 'to be voted up and down by fluctuating majorities.'"

I could not recollect, at the time the sheet was passing through the press, from whom I had borrowed this felicitous phraseology. I have since found, that it is from Mr. Coleridge's *Constitution of the Church and State, according to the Idea of each.* "With this experience, and it would not be difficult to increase the catalogue, can we wonder that the nation grew sick of parliamentary religions? or, that the idea should at last awake and become operative; that what virtually involved their humanity, was *not a matter to be voted up and down by fluctuating majorities?*"

P. 61, "The *practical* machinery of our Constitution may be described as a very successful and highly organized system for securing

the political government and civil administration of this country to the most talented men of the great parties into which this country has long been divided."

One of the difficulties in the *practice* of government is, that it imperatively requires *experience*, which none can have furnished to them but those who *are*, or *have been*, in power. The most talented men coming into office without any experience, would be incapable. Hence the advantage of two great parties like the Whigs and Tories. The one which is out of power, and may come in again, *has* been in already; — and the very knowledge that it *may* be in again, keeps its attention constantly alive to the business of government as carrying on by others. They are like half-pay officers who may be called into actual service at a moment's notice, and must, therefore, still keep up their professional acquirements.

It is with government, as it is with painting; every bystander can point out the faults, but not one of them could exchange places with the artist. In modern times, however, a large portion of the community, particularly *clever* young men of between twenty and thirty, who have dipped into political economy, have arrived at the belief that they, or almost any one, could carry on the government. Would that they could try their hands, as we do in the fencing-school, or the archery-ground! I recollect to have read of a Scotch minister, at the time of the French Revolution, who concluded his sermon in these words: —" Some o' ye wad hae no kings,—some o' ye wad be kings yoursells,—and I will tell ye, gude folk——*bonnie kings wad ye make!*"

P. 64, " If our ancestors, I say, who invented this theory, had been told of a state of things

in which the exercise of the prerogative, and of the general government, should be virtually transferred from the crown to the party constituting the majority for the time being in the House of Commons."

"As it had long been a maxim in the English government, 'that the king can do no wrong,' by which was meant that his ministers are alone responsible for ordinary acts of mal-administration, it was hence inferred, that these ministers must be allowed exclusively to direct and govern the state-machine; for it would be the height of injustice to load them with the crimes of another, nor could it be expected that any man of spirit would submit to be a minister upon such terms." * * * * * *

"These ministers being nominated or displaced at the discretion of the crown, their continuance in office was, of course, brought under the control of the two houses of parliament, and more especially under that of the Commons, upon whom, by their power of granting or withholding supplies, the movements of government ultimately depended." *

"The truth is, that this power [government influence] does not belong to the king so properly as to the majority of the House of Commons; and that it is rather by the actual *exercise* of this power, than by being subjected to its operation, that the legislature is debased and corrupted. The king exercises his patronage through the mediation of his ministers; and the definition of a minister, according to the practice of the Constitution, is, not a person nominated by the king, but a person supported by two-thirds of the House of Commons. The king, individually, neither is nor can be consulted in the greater part of the

* Millar's *Historical View of the English Government*, vol. iv. p. 73.

appointments which are made in his name; nor is it to him or his personal favour that the nominees understand that they are indebted for such appointments. The patronage, therefore, is vested substantially in the majority of the House of Commons, who can make a minister, and by whom all ministers know that they are made and continued."—*Edinb. Rev.* vol. xiv. p. 286.

P. 96, "those who have learnt by observation, that a pure government of public opinion is the worst of all governments, because it is this to-day and that to-morrow."

The question of *Vox populi* requires to be much more scientifically treated than has yet been attempted. In truth, we are infants yet in political science. If I understand what Mr. Coleridge obscurely intimates on this point, (*Constitution of Church and State, p.* 113,) he means that it is what I should call a principle of *extreme application* in politics; *i. e.* a principle acting at extreme points, like the safety valve, for example.

If there be one thing more than another which a life dedicated to thought and observation teaches, it is the extreme worthlessness of ordinary human opinion. To the studious and practical man, who goes on from year to year, watching every process of his own mind,—accumulating facts and phenomena, checking reasonings, comparing arguments, testing theories, and musing unceasingly on all these results, by the road side, "at rising, going to bed, and during meals," and who yet, with all this volume of investigation in his hands, oscillates anxiously and tremulously between the one opinion and the other,—the one system and its opposite;—the confidence, the arrogance, the lightness with which ordinary men hotly embrace sentiments and opinions of which they really understand nothing, and on which they would not even have a common language with him,

on which he could not even make them understand him if he were to discourse, is equally marvellous and contemptible. This, however, still leaves the difficulty unsolved, of furnishing any *test* for the superiority of opinion. Although it is clear that the many cannot be trusted to measure scientific profundity, it is equally clear that they cannot take every man of science upon his own valuation. Yet for the many to choose their own statesmen is as absurd as for schoolboys to choose their own schoolmaster. This seems to prove the necessity of a permanent aristocracy of talent: not *self-elected*, but *self-electing*. See on this subject, though in another aspect, yet equally applicable to politics, Mr. Green's *Distinction without Separation, in a Letter to the President of the College of Surgeons*, pp. 18—22.

P. 96, "that congress is fast verging to a state which their own wisest publicists, when they dare speak out, predict as the inevitable destruction of that prosperity."

Those who have no more confidential sources of information, are referred, for abundant materials for reflection upon this point, to the article on Legislation in the fourth number of *The American Jurist*. It is curious that those American writers who speak in the most unconditional terms of the successful practical results of the American democracy, rest their case partly upon the alleged difference between the American and European character. "It is not pretended" (says Mr. Rawle, in his very able work on the Constitution of the United States) "that party ebullitions do not sometimes overpower the calm reflection of the community, but the illusions are temporary, and the sound judgment which never wholly departs from the entire body, ultimately recovers its ascendancy. That universal

phrenzy of the nation, of which Europe, both in ancient and modern times, has exhibited instances, never found place with us. Temperate and self-collected in the most trying seasons, America always pursued a regular course, terminating in that security and peace, which violent agitations and tumultuous passions could not have procured. Their good sense displays itself in the utter rejection of personal influence, when the pursuits of the party are hostile to the general sentiment. What is believed to be for the public good is never sacrificed to the views of any individual, however distinguished." p. 290.

I can understand the American government theoretically, but I cannot yet understand it practically.

How does America make *congress* do the work of what we call "*government?*"

Or is it really done by government, *sub rosâ*, and not avowedly as here? Is that all the difference?*

How is the necessary intimate union and conformity of operation kept up between the *pratique* of the different public departments, (the dock-yards, the customs, &c.) and the legislature, when dealing with those subjects?

What *offices* are there in congress, what bureaus, for managing the details, and communicating with the departments themselves?

The constitution vests "the executive power" in the president, but there is no definition of "executive power;" and many of the powers specifically conferred on congress are strictly executive. See the annexed analytical Table of the Powers of Congress.

* I read in *The North American Review*, No. 56, p. 154, the following pregnant words. "On taking the question, *General Washington's administration was left in a minority*, by a vote of nearly two to one." This is the language of the English machinery.

A TABLE OF THE OWERS OF CONGRESS.

LEGISLATIVE POWERS.	ADMINISTRATIVE POWERS.	EXECUTIVE POWERS.
To lay taxes, duties, imposts, and excises.	To pay the debts of the state.	To collect taxes, duties, imposts, and excises.
To determine the mode and means of defence.	To borrow money on the public credit.	To raise, organise, and keep on foot the means appointed by the legislature for the public defence. (Army, ordnance, navy, &c.)
To establish post-offices and post-roads, authorize rates of postage, &c.	To regulate commerce with foreign nations.	To superintend post-offices, post-roads, &c.
To define and punish piracies and felonies committed on the high seas, and offences against the law of nations.	To coin money, and regulate the value thereof, and fix the standard of weights and measures.	To constitute tribunals.
	To promote the progress of science and useful arts.	To superintend the execution of the civil and criminal law of the realm.
	To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.	To erect and support forts, magazines, arsenals, dock-yards, and other needful buildings.

P. 111, "Prerogative (depending wholly upon influence) has exerted itself in nothing; and the whole executive government has been, *with its own consent,* carried on in your popular council."

The oversight committed in this transmutation of the constitution was, that it was not foreseen that a transfer having once been made of all the material parts of the executive government from the ministers of the crown to parliaments *under their influence and control,* the time would come when parliament would have acquired a sort of prescriptive right to carry on all the material parts of the administrative government; and when, *retaining that right,* it would refuse any longer to be under the influence and control: when, as a consequence, the principle of representation, originally introduced as a restraint upon taxation, and a security against mischievous *civil legislation,* would come to be applied to the high matters of political science; and when the unspeakably delicate adjustments of contending interests, and the resolution of the highest scientific problems, would come to be effected by numerical majorities.

P. 113, "each being the independent organ of that element of the Constitution which denominates it."

The subject of "representation" is one on which we have not yet arrived at any that can be called scientific principles. It is "words—words—words."

The article on "Instructions to Representatives" in *The American Jurist,* No. 8, contains so much that is deserving of reflection, that I am tempted to make some extracts from it, as the work has little circulation in this country:

"Whether representatives are bound by the instructions of their constituents, is a question which is much discussed in this country. The obligation of such instructions is often asserted in strong language in the newspapers and at popular meetings; and to deny it is sometimes denounced as a political heresy of the most serious character. The nature of our institutions evidently gives this question a deeper interest in this country than in any other.

"The opinion of Burke on this subject, as delivered in his celebrated speech to the electors of Bristol, is probably familiar to our readers. In a few sentences, but sentences rich with argument and wisdom, he attacks and refutes the popular doctrine upon the right of instruction. This speech appears to be the basis of the greater part of what has since been written on the same side of the question. Indeed, the correctness of his conclusions is so manifest, that we should hardly think it necessary to enter upon the discussion, if the opposite opinion had not found numerous and zealous supporters in the United States.

"In considering this question, it should be always borne in mind that those who deny the right of constituents to give binding instructions to their representatives, admit in the fullest manner their right to meet and express their opinions. It is hardly necessary to say that the representative ought to listen with respectful attention to the advice of the body of men by whom he has been chosen; all that is denied is, that he is under any obligation to vote in conformity to their wishes.

"This right of instruction, if it exist in this country, must arise out of the provisions of the constitution, or be a necessary consequence of the relation of representative and constituent, or be established by long usage."

* * * * *

"Is then the right of instruction a necessary incident to the relation of representative and constituents? It

is sometimes said that a representative is a special agent, bound to act in conformity with the will of his principals. This is taking the question for granted. But it seems to us, that a representative is no more, and in no different manner, the agent of the persons who elected him, than any other public functionary is the agent of the body by which he is chosen.

"It is true that members of congress, or any legislative body, are properly called representatives of the people: but judges, sheriffs, and governors, are equally representatives of the people. All power, according to the theory of our government, springs from the people; they are the supreme authority. The people, being too numerous to act in their collective capacity, have appointed certain persons to exercise the different functions of government. The duties which are to be performed by judicial, executive, and legislative officers, are of such a nature, that they cannot be exercised by the whole people. The governor and sheriffs of a state are representatives of the executive,—the judges, of the judicial,—and members of the legislature, of the legislative power of the state. So it is with the government of the United States. These three powers are executed by three different sets of functionaries. All these officers are not chosen directly by the people, but all their powers rest upon, and originate in, the people. And we cannot see how the power of choosing a legislative officer can give the right of instructing him, any more than the power of choosing the president should give the electoral colleges the right of instructing him; or the power of appointing the judges of the supreme court should give the president and senate the right of directing the decisions of that court. In many places, as in New York, the sheriff is chosen by the people of a county; yet it has never been pretended that he is under any obligation to obey the instructions of the voters of the county. In Vermont and Rhode Island the judges are chosen annually by

the legislature; yet it would be thought monstrous, and a most flagrant outrage on the judiciary, for the legislature to attempt to direct the mode in which particular cases should be decided. The governors of Maryland, and other states, are chosen by their respective legislatures. Can the legislature, therefore, in one of these states, direct the governor as to the discharge of his executive duties—direct him to appoint this or that individual to an office, or to pardon a prisoner?

"An analogy has sometimes been supposed to exist between ambassadors from sovereign states, and representatives. It is said that ambassadors are bound by their instructions, and therefore that representatives ought to be so too. But the analogy is false. Ambassadors derive all their power from the nation by whom they are sent, and are therefore bound by orders from the constituted authorities of that nation. But a representative derives none of his authority from the body of electors who choose him. His authority is derived from the nation, and expressed in the constitution. The nation, in order to have some organ for legislation, has directed that the members of the legislature should be chosen in a certain manner. The only power which the nation has delegated to any particular district, is to choose a representative. When that is done, the district choosing him has no further power. Undoubtedly the nation, in framing a constitution, might have given this power of instruction to the bodies choosing the representatives. But as it is not given, it does not exist. The whole legislative power belongs to the body to whom the nation has delegated it; no other portion of the nation can have any part of it. The power of choosing a public functionary, we repeat it, does not in this case, any more than in that of a sheriff, a judge, or a governor, imply the right to direct his proceedings.

"It being clear, therefore, we think, that the right of instructing representatives is not given by the

constitution, and does not arise necessarily from the relation of a representative to his constituents, it remains to consider whether such a right may not have been gained by long established usage. On this point there can be no doubt. There has not been such a long-continued and peaceable enjoyment of this privilege as to establish that as right which commenced in wrong. The instruction of representatives has been sometimes attempted; but the binding obligation of these instructions had been generally contested. Many cases have occurred in which representatives have voted contrary, not only to the known wishes, but the express instructions of the body which elected them: and we do not know that it has in any case been questioned that their votes were valid. This alone seems almost decisive of the question, if it depends on usage."

* * * * *

"It is often said that if a representative cannot conscientiously comply with the wishes of his constituents, he ought to resign. This course has, in fact, been adopted in some instances. But, if we do not entirely mistake the nature of the representative's duties, he is under no obligation, in such a case, to give up his seat. If he is the mere organ to express the will of his constituents, he ought to do so; and he incurs no moral responsibility for any vote he may give in conformity to their directions, though his private opinion may be entirely opposite. But if, as we believe, he is not the agent of the little body by whom he is chosen, but the servant of the whole people, and bound to consult the general welfare, why should he resign his seat, and thus refuse to vote as the general good demands, rather than act contrary to the will of his constituents, which at the same time he professes not to be bound to obey?

"But the most important question remains behind,—whether it is expedient that constituents should bind their representatives by their instructions; for if it is expedient, it would be easy to give them such a right

by an amendment to the constitution. On this point, however, we entertain even less doubt, if possible, than on the others. To admit such a right in the constituents, would, as it seems to us, at once subvert all the advantages of our present system of government, and render nugatory all the checks and balances provided by the constitution.

"What is the object of a representative government? It is to ensure the election of the best men to administer the executive, legislative, and judicial functions. The people, in their collective capacity, are obviously incapable of action. The mass of the people, even in the most enlightened community, can never be fitted for statesmen or judges. How monstrous and absurd would it appear to call a town meeting to vote upon a common question of legislation, even in a case where no excitement existed. But supposing passion or feeling to be excited, who should be willing to confide in the judgment of such a meeting? The most popular orator would usually carry the day. To prevent the influence of sudden feeling and prejudice in our legislation, has always been a problem, and one which is not yet completely solved. Men are fallible; and, even when acting with the purest motives, are liable, sometimes, to mistake their own true interests; and sometimes to lose sight of the rules of rectitude and honour. More especially when they are acting in large numbers, and under the influence of a sudden excitement, they are in great danger of being led into measures, of which their cooler reason would disapprove. It is, therefore, provided that a certain age shall be requisite for members of congress, in order to exclude the ignorance and rashness of extreme youth. It is provided that the legislature shall consist of two branches, one more numerous than the other, in order that no law shall be passed until it has been deliberately discussed by two different bodies, one of which being composed of a smaller number, and chosen for a longer period, may

be supposed to be less under the influence of temporary passion and prejudice. And yet, after all this care to secure deliberation, no act of legislation becomes a law until it has received the sanction of the President,—of a single individual, conspicuous and responsible. If the right of instruction could be fully exercised, so as to bind all senators and representatives, this whole system, which the constitution has raised with so much care, would be overthrown; all the guards which have been given in order to secure a careful and deliberate examination of every subject, and to protect legislation from the influence of sudden and popular emotion, would become worthless.

"Again, carry the right of instruction into full operation, and society would be thrown into a perpetual turmoil. There would be no end to instructions. Every town would be called together, almost daily, to deliberate upon the projects of political fanatics. Representatives, instead of going to Congress to consult together for the public welfare, and mutual information on the subjects of debate, would come with their orders in their pockets, callous to argument, and compelled to follow them, though reasoning should be used which they feel would convince their constituents, if it could be laid before them. New evidence might be produced, and new circumstances might occur, which would change the vote of the representative, if he was acting according to his own opinion; and yet he would be bound to follow the tenour of his instructions. The very object of a meeting of Congress,—deliberation for the public good,—would, in this manner, be defeated.

"The opinions which we advocate, cannot be objected as not sufficiently popular, for the power of re-election gives the constituents as great an influence over their representatives as is desirable. Besides, will any one who has paid any attention to the history of our country, deny for a moment that the voice of the

people is sufficiently heard in the halls of Congress? Is it not more common, on the contrary, for representatives to partake too deeply of the narrow party feelings and local jealousies of the little communities which elect them? We are happy in believing that the majority of our citizens are desirous that the public councils should be guided by wisdom and justice; but there are questions daily brought before the national legislature, which the great majority of the community, including many individuals of education and talents, are incapable of deciding correctly as they arise, because their attention has not been devoted to such subjects. To comprehend fully these questions requires the mind to be trained to the business by long practice and study. To say that, without this previous preparation, they are beyond the reach of the majority of men, is no more discreditable to them, than it is to say that they are not born priests, doctors, engineers, lawyers, merchants, blacksmiths, or carpenters. No individual can know every thing which is important to his own personal welfare or the public good. On many subjects, even in the most enlightened community, every one must trust much to the discretion of others, who are more conversant with those subjects. And though the right of an individual to instruct his private agents is unquestionable; yet it is a right which he exercises very rarely in matters with the details of which he is not familiar. He is content with dismissing his agents, if he finds they do not perform the business entrusted to them faithfully. No one, for instance, thinks of directing his attorney how to frame a plea, or his physician how to ascertain a disease, or what medicine to prescribe; or pretends to tell his carpenter what tools he must use, or his blacksmith how long he must keep his iron in the fire. All that the employer, in cases of this kind, can do, is to select persons in whose skill and fidelity he can confide. So it is in regard to legislation: the voters can judge of the

integrity and capacity of their representatives, though they cannot of many questions which must come before the legislative assembly. One provision in a bill is objected to as being unconstitutional; another, because it is not in accordance with the general system of the United States on the same subject; a third, because it will operate upon a subject which it was not intended to affect. One section is too narrow, and another too broad in its extent. One clause is inconsistent with the general object of the bill, and requires to be struck out; another is obscure, and must be amended. Scarcely a bill of any importance is introduced, in which questions of this kind do not occur. The mode in which they are determined may involve important interests; yet it is evident that a popular meeting could not act upon these questions.

"It is indeed so obvious that popular meetings are not suitable for examining the details of legislation, that all which they have generally attempted has been to give general instructions upon a subject of interest, as to favour or to oppose some particular measure. But even this power, restricted as it is, would be found inconvenient and dangerous in its operation. The constituents cannot know the exact form of the proposed measure, or other causes, which may be such as would entirely reverse their wishes with regard to it. The representative, for instance, is ordered to vote for an increased duty on a particular article; but the bill introduced increases the duties upon other articles, and he thinks that his constituents will be more injured by the increase in the latter case, than they will be benefited by it in the former. Ought he to be bound to follow their instructions blindly, or to vote according to what he believes to be the interest of the country? Again, the representative is instructed to vote for war with a foreign nation. But when the question is brought forward, news arrives which renders an accommodation by negotiation probable. Ought he to be bound to

join with an angry party, in a declaration of war; though he cannot tell what effect the news might produce upon his constituents? The truth is, that neither the expressed will, nor the known wishes of constituents, to whatever respect they may be entitled, but the public welfare, ought to be the guide of the representative's conduct.

"We have given a few pages to this subject, not because it appears to us at all difficult, but because it has been much misunderstood and misrepresented. Indeed, the position that the bodies of voters who elect representatives, and that the legislatures of the States, constitute portions of the legislative power of the United States, as they must if their instructions to senators and representatives are binding, seems to us such an obvious absurdity, that no argument can make it appear to us more unreasonable than the mere statement of the proposition. We find it difficult to conceive how any person, considering the question coolly and dispassionately, can come to any other conclusion than that the right of giving binding instructions to representatives is not given expressly by the constitution, and that it is not a consequence of the relation between the representative and his constituents; but, on the contrary, that the provisions of the constitution, and the nature of the office of a representative as a member of the national legislature, distinctly negative such a right; and further, that it is inexpedient that constituents should have such a right, as in most cases it would be impossible for them to exercise it at all, and in those in which it would be possible, it could not be exercised either with advantage or safety."

I beg leave to add here a few observations on the subject of *direct and indirect representation.*

Indirect representation, I may observe, is of two kinds. *First*, when influential men in any particular class or interest are sent into parliament, or procure a

seat there, they indirectly represent the class or interest to which they belong; — and this, perhaps, though indirect, is the most effective of all representation, since a man will certainly consult in the highest degree for those interests with which his own are identified, and which constitute the main importance, and the chief anxieties, of his life. No man can say that the London bankers, and traders, and merchants, are not as well represented by the individuals of those classes who sit in the house, as if those classes themselves specifically returned members by a provision of the Constitution. There is, indeed, as to these interests, a superiority in the system of indirect over that of direct representation, because the number of indirect representatives will always, in some degree, keep pace with the extent and importance of the class; while, if the representation were direct, the number must continue fixed for an indefinite period. *Secondly*, A person who is returned wholly by a particular class of constituents, becomes, (so far as there is any meaning in direct representation,) a representative of the interest of *that class;* and if, as must almost universally happen, the interest of that class, although they themselves be locally confined to a particular spot, is identical with the interest of the same class all over the kingdom, then the person does indirectly represent the interest of the whole class; and the measure of his direct representation of his own constituency, will be the measure of his indirect representation of the class. We might thus create a fair representation of the whole community, by selecting single spots or districts, in each of which some one class of the community is congregated, until we had fairly exhausted every class, and authorizing each of the districts to return a certain number of members. But when a person is returned for a district sufficiently large, and in which the elective franchise is sufficiently extensive, to comprehend all the

varieties of classes within its constituency, it becomes *a district*, not *a class*, which is represented (unless, indeed, any particular class have an overpowering predominance in that district); and the only direct or indirect representation which appears to exist, is that of local interests, such as the affairs of rail-roads, navigations, and the particular trades which predominate within the district. So far as these interests are confined to that district, there will be direct representation only;—so far as they extend to other districts, there will be indirect representation also.

I have said above—"as far as there is any meaning in direct representation"—for I have great doubts whether the modern notion of direct representation, in this country of indistinct ideas, will stand scrutiny; and the above extracts increase those doubts. It is curious to see how men's minds work in the dark. "Is not *representation* a humbug?" said a very keen-sighted, but not very scientific, friend to me lately. "Certainly," said I, "in the sense in which it is now used." Take, for example, the members for Westminster. What do they represent? — Opinions? *Whose* opinions? What are the collective opinions of Westminster?—Interests? *Whose* interests? What are the collective interests of St. James's Square and Tothill Fields? And yet we may find voters from both, for the sitting members. Which do they represent? O, says one, they represent "the majority!" What majority? The majority on the poll? There is no majority but the excess. There is no majority so long as the opposed candidates are equal. Who *are* "the majority?" Those who come first—those who come in the middle—or those who come last? No; says another, the majority of their own voters. How, I ask, is that majority ascertained, and where is the identity of their opinions and interests?

But take it either way, what becomes of your accredited theory that every man who possesses a

vote is represented,—*if* representation mean delegation of opinions, of interests, of actions. First, how are *they* represented who have voted for the unsuccessful candidate? Secondly, how are *they* represented who have voted for the sitting members,—but whose interests the sitting members *vote against?* Thirdly, how are *they* represented whose opinions or interests are reversed before a re-election? If the sitting member be my delegate, I ought to have the power of withdrawing my delegation, and transferring it; and an account-current ought to be kept up between the sitting and the non-sitting member, and the former unseated whenever the balance is against him.

"No subject of England," says Blackstone, "can be constrained to pay any aid or taxes, even for the defence of the realm, or the support of government, but such as are imposed by his own consent, or that of his *representatives* in parliament."*

This might be true, if parliament, like a jury, were obliged to be *unanimous* in consenting to a tax. But how is it true of the minority who vote against the tax, and their constituents—unless Blackstone intended an equivoque in the word *representatives*—as considering the whole House of Commons indiscriminately, and, by consequence, a majority of that house, as representing the whole country. This, however, is not *representation* consistently with the modern demands.

The simple fact is, that no *two* individuals can be so identical in their interests and opinions, that they can be represented, in each, by any *one* individual, in the strict sense of the word. The question, then, for solution is, what do we *mean* by representation, the word being a figure only?

In conclusion of these hasty remarks, snatched from far other cares, I beg to suggest to those who may

* 1 Bl. Com. 140.

entertain the same views of this momentous subject as myself, the following as a form of declaration, in which the peculiar grounds of their opposedness to the Reform-Bill might be distinctly recorded.

"We, the undersigned loyal and dutiful subjects of His Majesty, although attached unaffectedly,—and by grateful recollection of the many evils, civil, political, and religious, from which this country has happily emancipated itself,—to the cause of wholesome and real reform, feel ourselves called upon, at the present crisis of public excitement, in which all opposition to the measure proposed by His Majesty's ministers is denounced as interested and prejudiced tenacity, to declare and record the grounds upon which we find ourselves in the painful situation of dissenting from the expression of opinion so loudly and extensively made by our fellow-contrymen, and to which, if honest conviction would allow, we should rejoice, and be proud to respond.

"We are opposed to the measure introduced by his Majesty's ministers—

"Because we consider the usage, which is of comparatively modern growth, of carrying on the administrative government of the country in Parliament, and more particularly in the House of Commons, instead of by force of the prerogative,—and subjecting every measure, as originated, to full and public debate and discussion in the legislature, and thence in the country at large,—has been, though little observed, because gradually introduced, a more real and effective preservative against the tendency of all governments to misrule, than any supposed machinery of check or restraint which the theoretic Constitution of this country contains, either by stopping the supplies, or otherwise; and because that usage necessarily depends, *for its practicability*, upon a moderate preponderance of the influence of the Crown in the houses of

parliament, so as to preserve the government there carried on from factious intrigue, and daily and capricious opposition, and to reserve that opposition for occasions of real misconduct or misjudgment.

" Because the two main objects which every Constitution ought to seek to accomplish, and compared with which all others sink into insignificance, are, on the one hand, to secure to the government adequate power to conduct the civil administration of the country conformably to the best and most enlightened opinions, even when, in opposition to popular or superficial notions, prevalent at the time among the community; and, on the other hand, to secure to the community, viz. to the middling and lower classes, adequate protection against the natural abuse of the power given for the former purpose, manifesting itself in undue expenditure of the public money, unnecessary or contumelious indifference to the public feeling, or undue subordination of the interests of those classes to the interests of the aristocracy or other more immediate connexions of the government;—and the obtaining these two diverse and opposite results, under all the fluctuating circumstances and positions which time brings forth, is the real problem which the makers and reformers of Constitutions have to solve.

" Because this problem is *not* solved by the measure now under consideration; inasmuch as while it provides, perhaps successfully, for the latter object, it makes shipwreck of the former; putting an end to the power of individual talent and wisdom to conduct the government upon system; and is, therefore, only an exchange of one great evil for another; like the substitution, in medicine, of one diathesis, equally dangerous or fatal, for an opposite one which is removed.

" Because, though it is true that the existing system may sometimes, in return for the aid which it yields to the government, subject that government to the opinions, interests, or prejudices of the owners of boroughs upon

particular subjects, yet the change which is proposed does not, as is alleged, emancipate the government from such subjection, but only transfers the exercise of it, in greatly increased power, to a portion of the community far less educated and informed, and whose opinions *may* be as much mistaken, or as mischievous in their actual results, as those of the proprietors of boroughs.

" Because a measure operating a fundamental change in the practical Constitution of the country has been introduced by surprise, and without previous and strict investigation of its actual effects in those countries which have similar practical Constitutions, particularly in the United States of America; and, because there is substantial reason, from some recent American publications of a high character, to doubt whether the state of things in Congress is not rapidly approaching to a crisis, in which the best interests of the Union must be at the mercy of chance, and the lowest political and electioneering intrigues.

" Because it must be evident to every person practically acquainted with business, that the concerns of no public body could be carried on with any consistency or success, if the measures of the managing Directors or Committee were, at every step, at the mercy of crude and imperfectly-informed interference and over-ruling, by the proprietary, led on by headstrong or intriguing individuals, — and that no men of sense would retain their situations as Directors under such a dictation, since it would neutralize the whole value of their individual skill and judgment;— and, because it is evident that a powerful, promiscuous, and unrestricted interference by the whole proprietary, with all their clashing and conflicting interests, would be even yet more fatal to the management than a secret influence, exercised upon certain specific points, by a particular party among the Shareholders, however mischievous the latter might be, which is not denied.

"Because it cannot be shewn that there is any practical difference between the administration of the affairs of the empire and those of any great public body, except in the exceeding magnitude of the former, and the far greater responsibility of the managers; because, in point of fact, the affairs of the empire are now administered with a degree of publicity and consequent restraint and control, far exceeding that of any public body in existence, where, in the interval of annual or general meetings, the affairs of the company or body are carried on in private, and by force of the prerogative conferred by the constitution of such companies; and, because the secret influence exercised by the proprietors of boroughs, however mischievous it may have been, has, for a long time past, been rapidly decreasing, from the decrease of government patronage, and the vast augmentation of the power of public opinion, as an antagonist principle.

"Because, although it is true that men are less disposed to *complain* of mischief done with their own help and concurrence, than of mischief done in opposition to their advice, it will, in point of fact, be equally fatal, whether the vessel of the state goes over on the larboard or on the starboard beam; and if the ballast has been all gradually shifted a-weather, while the vessel was on the one tack, and she is suddenly brought up and laid on the other, without re-arranging the ballast, it will be obvious to every seaman that she must be but too liable to capsize."

THE END.

R. CLAY, PRINTER, BREAD-STREET HILL.

Lord Dudley on the practical as contradistinguished from the theoretical Constitution of England. p. 13. of the Preface.

— Folly of a fastful object pursued Government. p. 18 — 2nd - 19. Dec 7.

— On the tyranny & inefficacy of the Press - p. 25. Ref.

— The theoretic Constitution has ceased since 1680. no Montesquieu, Delolme or Blackstone now Presented on the substituted Machinery. p. 6. —

— The three co-equal Elements of the theoretic Constitution, have come to be wherein E. in the Commons House of Parliament. p. 8.

— Constitutional Enactments are those which are fixed by immutable Laws of a specific character. But every known Constitution allowed has provided for changes under a more solemn form - p. 14 — 20:

— Essay on rise & Progress &c. on the English Government & Constitution - p. 27.

— It is the rarest of all Philosophy to know what is seen every Day. p. 30.

— Definition of the English Constitution - p. 31.

— administrative Government is a profound & complicated Science. p. 36.

— any Government which does not provide for the ascendency of gifted Individuals is not Scientific. p. 37

The execution or administrative Government in England controls the whole mass of political Legislation. pa. 39. 40. — His parliamentary Government. ...

— The Edinburgh Review Vol. 10. 411. & Vol. 14. 300 — gives a fair account of the modern English parliamentary Government & shewing that the representation & Power of the three Estates reside especially in the House of Commons - pa. 42—57.

— Bailey on the practical Machinery of the English Constitution which brings into action the most talented men of the Nation. p. 61. "God made some men to be wise & some men to play on the fiddle."

- conceited Democracy ridiculed — pa. 63.

— The idea theory of three separate, independent Estates of the realm, each acting for itself & for the community & independent by its veto is exploded, & as the Crown has lost its independent resource, the Balance is gone to the House of Commons & the Aristocracy & the Crown have been obliged to resort to moral & political persuasion to have a compatible share of representation in the House of Representatives. p. 64, 5.

— If the influence of the King & aristocracy in the Lords in the House of Commons, compensation must be made by the revival of Royal Prerogative, in order to preserve any Balance.